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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 242.

MARY K. BURTON, PLAINTIFF IN ERROR,

vs.

THE WEST JERSEY FERRY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JULY 17, 1882.

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1 UNITED STATES, } *ss:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Mary K. Burton, a citizen of the State of Pennsylvania, plaintiff, and The West Jersey Ferry Company, a corporation existing under the laws of the State of New Jersey, and a citizen thereof, defendant, in a plea of trespass on the case, a manifest error was intervened to the great damage of the said Mary K. Burton, as in her complaint has been stated; and, as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given then under your seal you do distinctly and openly send the record and process in the suit aforesaid and all things concerning them, and this writ, so that you have the same before the Honorable the Justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this eighth day of May, A. D. one thousand eight hundred and eighty-two, and in the one hundred and sixth year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To The West Jersey Ferry Company, a corporation existing under the laws of the State of New Jersey, and a citizen of said State, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Mary K. Burton, a citizen of the State of Pennsylvania, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 26th day of May, in the year of our Lord one thousand eight hundred and eighty-two.

WM. BUTLER, *Judge.*

2½ Service is hereby accepted for the West Jersey Ferry Co'p'y & the clerk will please enter my appearance for the def't in error.

June 6, 1882. SAM'L DICKSON.

3 In the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit.

MARY K. BURTON

vs.

THE WEST JERSEY FERRY COMPANY.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *sct:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit. Of October session, 1881, No. 52.

It is thus contained:

Be it remembered that on the 1st day of December, A. D. 1881, The West Jersey Ferry Company, by its attorney, Samuel Dickson, Esq., comes into our said court here and file of record an exemplification of the record of the court of common pleas No. 1, for the county of Philadelphia, which, being read, is as follows, to wit:

4 *Exemplification.*

PHILADELPHIA COUNTY, }
State of Pennsylvania, } *sct:*

Among the records and proceedings of the court of common pleas No. 1, for the county of Philadelphia, State of Pennsylvania; the following may be found as matter of file and of record, at No. 29, June term, 1881, to wit:

Docket Entries, June Term, 1881.

J. Carty, 29.	Mary K. Burton	Sums case.
S. Dickson,	*vs.*	Exit May 19, 1881.
securit-.	The West Jersey Ferry Company.	Ret'ble 1 Mar.; June, 1881, service accepted.
	June 14, 1881, narr. and rule to plead filed	Nov. 1, 1881, petition for removal of cause to U. S. circuit court filed.
	June 22, 1881, plea filed.	*Eo die.* bond filed.
	Oct. 22, 1881, rule to take depositions of infirm witnesses filed.	

C. P. No. ——. June T., 1881.

5 MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. ——.

Proth'y issues. Sums case, ret'ble 1st Monday, June, 1881.

JEROME CARTY, *Pro Pl'ff,*
Per THOS. S. LEIGH.

May 18, 1881.
To Proth'y, C. P.

(Endorsed:) 29. June T., 1882. C. P. No. 1. Burton *vs.* Ferry Co. *Præcipe* for sum's case. Filed May 19, 1881.

6 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, Greeting:

We command you that you summon the West Jersey Ferry Company, late of your county, so that it be and appear before our judges at Philadelphia, at our court of common pleas No. 1, for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of June next, there to answer Mary K. Burton of a plea of trespass on the case, etc. And have you then there this writ.

Witness the Honorable Joseph Allison, president of our said court, at Philadelphia, the 19th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

GEO. W. RAMERSLY,
Pro Prothonotary.

I accept service of the written writ for the West Jersey Ferry Company, defendant, and request the prothonotary to enter my appearance for it.

SAMUEL DICKSON,
Per WM. MORRIS,
Att'y for Def't.

MAY 21, '81.

Service accepted as above.

So answers.

THOS. H. STOKLEY.

So answers.

ENOCH TAYLOR, *Sheriff.*

7 [Endorsed:] 29. June term, 1881. C. P. No. 1. Mary K. Burton *vs.* The West Jersey Ferry Company. Maurice J. Browning, director, 42 N. Front st. Summons case. Carty.

C. P. No. 1. June T., 1881.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. 29.

CITY AND COUNTY OF PHILADELPHIA, *ss:*-

Mary K. Burton, the plaintiff in the above case, by Jerome Carty, Esq., her attorney, complains of the West Jersey Ferry Company, the defendants, a body corporate in the law, who were summoned to answer the said plaintiff of plea of trespass on the case—

For that whereas the said defendantss before—at the time of the committing of the grievances hereafter mentioned, were and still are the proprietors of certain ferry-boats for the carriage and conveyance of passengers from Camden, in the State of New Jersey, to the city of Philadelphia, in the State of Pennsylvania, for hire and rewards to the said defendants in that behalf, and the said defendants, being such proprietors of said ferry-boats as aforesaid, thereupon heretofore, to wit, upon the thirty-first day of January, A. D. 1881, the said plaintiff, at the special instance and request of the said defendants, became and was a passenger upon one of the said ferry-boats, to wit, "The Arctic," to be safely and securely carried and conveyed thereby, to wit, on a certain journey from Camden to Philadelphia, for a certain fare and reward to said defendants in that behalf, and the said defendants then and there received the said plaintiff as such passenger as aforesaid, and thereupon it became and was the duty of said defendants to use all due and proper care that said plaintiff should be safely and securely carried by and upon such ferry-boat on said journey from Camden to Philadelphia as aforesaid. Yet the said defendants, not regarding its duty in that behalf, did not use due and proper care that said plaintiff should be safely and securely carried by and upon said ferry-boat on said journey aforesaid, but wholly neglected so to do, and suffered and permitted said ferry-boat to be so negligently, carelessly, and improperly driven and steered by the agents and servants of said defendants that by reason thereof afterwards, and while said ferry-boat was proceeding with said plaintiff thereon upon the said journey aforesaid, and upon the arrival of the said ferry-boat at Philadelphia, to wit, upon the day and year aforesaid, and upon the Delaware river, at Philadelphia, said ferry-boat became and was driven with great force and violence against the dock, and by means thereof said plaintiff, who was lawfully using and occupying said ferry-boat as passenger, as aforesaid, was thrown violently upon the deck of said ferry-boat, and thereby received a serious and permanent injury to the spine, and she was otherwise greatly bruised, maimed, wounded, and injured, and also by means of the premises the said plaintiff became and was and still is sick, sore, lame, and disordered, and has so remained and continued for a long space of time, to wit, from thence hitherto, during all which time said plaintiff suffered and underwent and still suffers and undergoes great pain and anguish in mind and body, and was and still is hindered and prevented from

transacting and attending to her necessary and lawful affairs by her during all that time to be performed and transacted, and the said plaintiff lost and was and still is deprived of divers great gains, profits, and advantages, which she might and otherwise would have derived and acquired, and thereby also said plaintiff was forced and obliged to and did then and there pay, lay out, and expend, and still is paying, spending, laying out, and expending, divers large sums of money, amounting to two thousand dollars, in and about the endeavoring to be cured of the said fractures, bruises, and injuries so received, as aforesaid; and also thereby said plaintiff was kept
13 and detained at the city and county aforesaid, away from her house and business, for a long space of time, and during that time there incurred great expense and outlays, amounting to the sum of two thousand dollars, in and about her necessary support and maintenance.

Wherefore the said plaintiff saith that she is injured and hath sustained damages in the sum of fifteen thousand dollars ($15,000), and therefore she brings this suit, &c.

JEROME CARTY,
Pro Pl'ff.

June 14, 1881. Per THOMAS S. LEIGH.

To Proth'y C. P.

(Endorsed:) 29. June T., 1881. C. P. No. 1. Mary K. Burton *v.* The West Jersey Ferry Company. Narr.

14 Proth'y enter a rule on defendants in above cause to plead in 8 days, or judgment *sec. reg.*

Filed June 14, '81.

JEROME CARTY,
Pro Pl'ff.

June 14, 1881.

15 C. P. No. 1. June T., 1881.

MARY K. BURTON
vs.
WEST JERSEY FERRY CO. } No. 29.

Defendant pleads not guilty.

Per M., S. DICKSON,
For Defend't.

June 22, '81.

(Endorsed:) 29. June term, 1881. C. P. No. 1. Burton *v.* Ferry Co. Plea. Filed June 22, '81. Dickson.

16 C. P. No. 1. June T., 1881.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. 29.

Proth'y enter a rule in above case on behalf of plaintiff to take the

depositions of infirm witnesses, to be read in evidence on the trial of the cause.

JEROME CARTY,
Pro Pl'ff.

Oct. 22, 1881. Per THOS. S. LEIGH.

(Endorsed:) 29. June T., 1881. C. P. No. 1. Burton *v.* Ferry Co. Rule for depositions of infirm witnesses. Filed Oct. 22, '81. Carty, *pro* pl'ff.

17 Common Pleas. June T., 1881.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. 29.

To the honorable the judges of the court of common pleas No 1:

The petition of the West Jersey Ferry Company, defendant in the above suit, respectfully represents as follows:

I. That the said West Jersey Ferry Company is the defendant in above suit, and is a corporation created and existing under the laws of the State of New Jersey, and a citizen thereof.

II. That the plaintiff, Mary K. Burton, is a citizen of the State of Pennsylvania.

III. That the above suit has not been tried, but is now pend-
18 ing in your honorable court, and that the current term, to wit, the term of September, 1881, is the first term at which the said cause would by any possibility have been tried.

IV. That the amount, exclusive of costs, in dispute in the above cause exceeds the sum of five hundred dollars.

V. That your petitioner desires to have above suit removed from this court into the circuit court of the United States for the eastern district of Pennsylvania.

Your petitioner therefore prays your honorable court, upon the filing of a bond by your petitioner, with good and sufficient surety, for the entering in said circuit court of the United States, on the first day of its next session, a copy of the record of said suit, and for paying all costs that may be awarded by the said circuit
19 court of the United States, if said court shall hold that such suit is wrongfully or improperly removed thereto, to remove said suit of Mary K. Burton against the said West Jersey Ferry Company to the circuit court of the United States for the eastern district of Pennsylvania, and that no further proceedings be had in said suit in your honorable court, in accordance with the provisions of the act of Congress entitled an act to determine the jurisdiction of the circuit court of the United States and regulate the removal of causes from State courts and for other purposes, approved March 3rd, 1875.

JAMES B. DAYTON,
President of the West Jersey Ferry Co.

(Endorsed:) 29. June T., 1881. C. P. No. 1. Burton *v.*
20 Ferry Co. Petition of defendant, for removal of cause to U. S. circuit court. Filed Nov. 1, 1881. S. Dickson.

21 Know all men by these presents, that the West Jersey Ferry Company of New Jersey, as principal, and Edward Roberts, Jr., as surety, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said obligee; to which said payment, well and truly made, the said West Jersey Ferry Company binds itself and its successors, and the said Edward Roberts, Jr., binds himself, his heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with the seals of the respective obligors. Dated the first day of November, A. D. 1881.

Whereas an action at law is now pending in the court of common pleas, No. 1, of Philadelphia county, of June term, 1881, No. 29, [in] which Mary K. Burton is plaintiff and West Jersey Ferry Company is defendant;

22 And whereas the said defendant is anxious of removing the said cause to the circuit court of the United States in and for the eastern district of Pennsylvania, under the act of Congress of March 3d, 1875:

The condition of this obligation is such, that if the said defendant shall cause to be entered in the said circuit court for the eastern district of Pennsylvania, on the first day of the next session, a copy of the record in the aforesaid suit, and pay all costs that may be awarded by the said circuit court if the said court shall find that such suit was unlawfully removed thereto, then this obligation shall be void; otherwise to be and remain in full force and virtue.

JAMES B. DAYTON, *Pres't.* [SEAL.]
JOHN F. STARR, *S'c'ty.* [SEAL.]
WEST JERSEY FERRY CO. [SEAL.]
EDMUND ROBERTS, JR. [SEAL.]

Sealed and delivered in the presence of—
AMOS RUDDEROW.
EDWARD ROBERTS, 3RD.
J. R. EVANS ROBERTS.

23 (Endorsed:) 29. J., '81. C. P. No. 1. Filed Nov. 1, 1881.

24 COMMONWEALTH OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Mann, prothonotary of the court of common pleas No. one in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein Mary K. Burton is plaintiff and The West Jersey Ferry Company are defendants, as the same remains of record before the said court at No. 29 of June term, A. D. 1881.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the eighteenth day of November, A. D. 1881.

[SEAL.]

F. N. SMITH,
Pro Prothonotary.

25 (Endorsed:) No. 52. October sess., 1881. U. S. C. C. Mary K. Burton *vs.* West Jersey Ferry Co. Record. Filed December 2, 1881. S. Dickson.

26 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And afterwards, to wit, on the 3d day of April, A. D. 1882, came the parties aforesaid, and the jurors of the jury aforesaid being called, likewise came, to wit: 1, Nathaniel Ellmaker; 2, Thomas Hall; 3, George B. Adams; 4, William H. Swire; 5, J. Hayes Linville; 6, Alfred L. Dingman; 7, John P. Keller; 8, Edwin Keller; 9, D. H. Wilcox; 10, John Gilsey; 11, Charles Kuhn; 12, Henry Monks, who are duly empanelled, returned chosen, tried and sworn or affirmed to try the issue joined, &c.

And afterwards, to wit, on the 4th day of April, A. D. 1882, the jurors aforesaid, upon their oaths or affirmations, respectively, do say that they find for the defendants.

27 And afterwards, to wit, on the 12th day of April, A. D. 1882, the defendants, by their attorney, Samuel Dickson, Esq., come into our said court here and enter judgment on the verdict in favor of defendants and against the plaintiff.

And afterwards, to wit, on the 21st day of April, A. D. 1882, the plaintiff, by her attorneys, Jerome Carty, Esq., files her bill of exceptions, sealed by Hon. William Butler, judge, which, being read, is as follows, to wit:

28 *Bill of Exceptions.*

In the Circuit Court of United States for the Eastern District of Pennsylvania, of October Sessions, 1881, sitting at Philadelphia before Hon. William Butler.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. 52.

Be it remembered that in the said term of October, A. D. 1881, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr), and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at Philadelphia aforesaid, before the Honorable William Butler, judge of the said court, on Monday, the third of April, A. D. 1882, the aforesaid issue between the said parties came to be tried by a jury of the said ——, for that purpose duly empannelled (prout list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn, or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff

offered in evidence the deposition of Mary K. Burton, the plaintiff, an infirm witness, which reads as follows, to wit:

29 Common Pleas No. 1. June Term, 1881.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. 29.

Deposition of Mary K. Burton, an infirm witness, *sur* rule entered *sec. reg.* Before Joseph I. Farley, notary public, October 28, 1881, at the Orthopædic Hospital, No. 1701 Summer St. Philadelphia, Pa.

Present: Jerome Carty, Esq., *pro* plaintiff; Richard Dale, Esq., *pro* defendant.

S. G. WILSON,
Official Stenographer, Orphans' Court, Room 17, *Ledger Building.*

ORTHOPÆDIC HOSPITAL, PHILAD'A, *October* 28, 1881.

MARY K. BURTON, having been duly affirmed, testified as follows:

Direct examination by Mr. CARTY;

Q. You are a widow, I believe?

A. Yes, sir; I have been for nine years.

Q. Where is your present residence?

30 A. I am temporarily at the Orthopædic Hospital, No. 1701 Summer street.

Q. Why are you here?

A. Through that fall—my falling on the boat; I was well before that. My hearing is also effected by that accident, and you will have to speak loud; I could hear well before that.

Q. What boat do you refer to?

A. The Arctic boat that came from Camden on the morning of the thirty-first of January.

Q. What is your present condition?

A. I am not able to be about; I am confined to bed.

Q. State under what circumstances the accident to you occurred on the 31st of January?

A. On Saturday evening, which would be the 29th, I went over to my sister's at Hainesport, N. J., and remained there until Monday. On Monday morning I started to come down on the cars, and did so, and when we got to the wharf the railroad boat was not there, and I waited a little while; and then, with a number of persons, I went up to the other ferry and went on the boat.

Q. Why were the boats of the railroad not running?

31 A. They told us it was on account of the ice; that is what they said there—the persons who were there.

Q. On what boat did you come over?

A. I came over on the Arctic.

Q. Did you buy a ticket or pay your fare?

A. I paid my fare as I entered; I had a ticket for the other boat.

Q. You are quite certain you paid your fare?

A. Certainly; I paid my fare; I am positive of that.

Q. State all that occurred after you went on the boat.

A. I went on the boat immediately after paying my fare. The boat was very much crowded, and I could not get a seat, and that is why I had to stand up. There seemed to be some difficulty in getting across; I could not see out of the window, but they stopped every little while or halted, and finally, before they got on the Philadelphia side, they stopped quite still for I don't know how long, but it was a little while, and then they moved on until we came very near, and then some one said, "We are now near the wharf." Then, all at once, this very sudden jerk came and jerked me off my
32 feet with many others; I didn't know hardly what it was.

The first thing I remember after I was down in this great crowd—there were a number down with me—I heard voices, and they said, "Get that lady out there that has the black velvet bonnet on." Some gentlemen took hold of me and pulled me out of that crowd; the others were getting up as fast as they could. I knew no one on the boat; I didn't see any person that I knew after I went on the boat. There were two gentlemen and two ladies, all strangers to me, helped me to the car. Those gentlemen took hold of me under the arms and carried me; I tried to help myself as well as I could, but I could do very little; I could not walk at all without their assistance. The two ladies took my little satchel and my umbrella; I did not know who they were, and I did not see them afterward.

Q. Do you remember anybody particularly who assisted you from the boat?

A. There was a gentlemen who told me his name was Sherman; I do not know his first name, but he went home with me; as
33 soon as he got me in the college he told them that he had an engagement and could not stay. They carried me upstairs then. I remember their getting me partly undressed, and that was the last thing I know about it. Perhaps I ought to say that, for I remember that they sat me on a chair first, and then moved me on a bed; I supposed that I had my clothes off then, and that was the last I knew anything about it.

Q. Until when?

A. For several weeks; I do not think I can remember just how long it was, or I do not think I could be positive.

Q. Then you were unconscious during that time?

A. Yes, sir; entirely. They told me I could not see. I recollect the first thing I could see was the ceiling, and the next thing I saw was the top of the looking-glass, which was before I could see any person at all for several days.

Q. Did you suffer any pain?

A. Yes, sir; I suffered very much. I cannot tell you how many weeks it was before I knew any one at all, but it was several weeks.

34 Q. Who was with you when you became conscious?

A. The persons in the house; Mrs. Glass is the one who took great care of me, but she is not there now.

Q. Any body else?

A. There were a great many.

Q. Was Mrs. Shreve there?

A. She was not there when I came home, but she came very soon; she attended me every day a number of times through the day. They would all be there; they went for my sister, and she was with me all the time after the next morning.

Q. Who attended you medically?

A. Dr. Bissey.

Q. How long was it that you were unable to be about?

A. I was very sick, and then Dr. Mills, a consulting physician was called in. I never was able to stand on my feet or use my feet any while I was at the college. On the 2nd of June I went to the Women's Hospital. There were four gentlemen lifted me out of the bed, put me on a lounge, and carried me over to where I was put on another bed.

Q. You were still unable to walk?

A. Yes, sir; I could always use my right hand; that was
35 the one part I could move, but I could not move my feet in bed.

Q. That was continuous from the time of the accident until you were carried to the Women's Hospital?

A. Yes, sir; they carried me over there, and I was there from the 2nd of June until the 8th of September; I think it was the 8th, but I was there fourteen weeks. Then, I was taken down stairs, as they thought that maybe a change would do me good by getting me to the country. Anyhow, they only kept me there three months; I did not suppose I would have been able hardly to have gone. Then they took me down and put me in a carriage and took me down to the ferry-boat. My two nephews carried me, and the man in the carriage lifted me bodily and took me to the ferry. Then they had a rolling-chair, which they put me in and took me to the cars across the river. One of the men that was at work there and my two nephews lifted me into the cars and took me up to my sisters at Hainesport, where I remained five weeks, and I never was out. Then they brought me here.

36 Q. You have never been out since you have been here?

A. No, sir; the first two or three days after I came here I exerted myself and went to the other room, but it was a great exertion, and I was not able to do it.

Q. Can you give any statement as to the nature of your hurt from your feelings, and as to where and how you are injured?

A. My head was hurt very bad. They kept ice on my head for nearly three months.

Q. I ask you the question for the purpose of ascertaining whether there was any particular point where you were injured, of which you are cognizant, or whether it was a general shock?

A. It was a terrible pain all over, and I could not use myself at all. It was a very severe pain, and I was blistered and leeched, and everything of that kind was done for me, and still my limbs were cold.

Q. Was your fall an easy or violent one?

A. I cannot tell you that for we all went down like a flash—it was such a shock. It was so quick that we could hardly tell.

37 In an instant we went up—the boat went up against the wharf so hard that it took us off our feet at once—a great many others beside myself. I passed through great suffering.

Q. What was the former condition of your health?

A. I was very well indeed. They all said that I was very active on my feet, and I know I was.

Q. Did you ever have any symptons of the kind you have experienced since that shock?

A. No, sir; never before. I was a healthy woman before.

Q. Were you actively engaged in employment?

A. Yes, sir; I was engaged at the office, and took in all the orders and gave out all the work at Girard College.

Q. What was your position there called?

A. It was called the assistant to the matron in the office; office assistant.

Q. How long had you been there?

A. Over a year. One year after the other matron went away I got the position.

Q. What was your position worth?

38 A. $300, and everything found; I had no expense at all, either for medical attendance or anything else. I was found everything except clothing.

Q. In your own way, can you give any description as to your mental anxiety or the suffering you have experienced during any of this time?

A. I have had great suffering. Of course it worried me, that I was hurt, to think that I could not do anything. That has worried me very much, because I have had to be a little dependent, and, as I done for myself very well before, it worried me.

Q. That is to say, you had no means of support except what you got from the college?

A. None other, except what I got from there.

Q. You have none now?

A. No, sir; I have not, and that has worried me on account of my not knowing whether I would have to be dependent upon some one else, which I am now at this time.

Q. Are you likely to occupy your position again if you should get well?

A. They told me, if I was able, that they would take me back, but I do not know about that if I do not get well soon. They

39 kept the situation open for me for three months, and then, as they found that I did not get any better, they had to fill it. They were very kind to me there—every one; I had all the attention, both in nursing and attention in every way, I could have possibly have had anywhere.

Q. On what part of the boat were you when the accident occurred?

A. Toward the Philadelphia side.

Q. How did you get there?

A. Through the crowd; they were pushing us around so much.

Q. You say that you were involuntarily pushed away and jostled until you were forced into the front part of the boat?

A. Yes, sir.

Q. Was the crowd standing thick or was it dispersed, with a few here and there?

A. Where I was they were standing as close together nearly as they could.

Q. Can you judge how many people fell at the same time you did?

A. No, sir; I cannot, but it seemed to be a minute or more before they could get me out from among those persons. They told
40 me that I fell on my right side. There were no bruises on my right side, but on my left side was the part where I was injured the worst. I do not know what caused that unless it was those who fell on me. It was the right side that I fell on, but the left part has always been more injured than the right part.

Q. What was your weight at the time this occurred?

A. I think it was about one hundred and sixty; I weighed one hundred and fifty-eight at New Years', and then I gained a little afterward; that was nearly a month before; I might have one hundred and sixty.

41 In the United States Circuit Court. — Term.

BURTON
vs.
THE WEST JERSEY FERRY COMPANY. } No. —.

PHILADELPHIA, *March 29th*,
ST. JOSEPH HOSPITAL, 16th & GIRARD AVE., 4. p. m.

Present: Jerome Carty, Esq., counsel for plaintiff; Richard C. Dale, Esq., counsel for defendants; Cyrus R. Morgan, stenographic commissioner; Mary K. Burton, plaintiff.

Cross-examination of MARY K. BURTON by RICHARD C. DALE, Esq.:

Q. You have been in the habit of crossing the Delaware river between Philadelphia and Camden at various times, have you not?

A. Yes, sir; I have always been in the habit of going back and forth.

Q. Both in the winter and in the summer?

42 A. Yes, sir; since my sister has lived up there I have been in the habit of going up there to see her, and I have never stopped going in the winter.

Q. You went up on Saturday afternoon previous to the occurrence of this accident?

A. Yes, sir.

Q. You crossed the river then by the Pennsylvania R. R. ferry?

A. I don't know whether you call it the Pennsylvania R. R. ferry or not; I understand it was the ferry to cross to go to Mount Holly cars.

Q. In that ferry boat you go right to the Mount Holly cars?

A. Yes, sir; I don't know whether that is the name; that I can't say, that I don't know, but I know it was the ferry to take to get on the cars.

Q. This ferry connects directly with the cars?

A. Yes, sir; connected with it.

Q. Do you remember whether there was much ice in the river at that time?

A. You mean on that Saturday when I went up?

Q. Yes.

43 A. Yes, sir; there was ice in the river as I crossed, though I don't think there was anything unusual on Saturday when I went up.

Q. There was considerable floating ice?

A. Yes, sir; there was considerable ice in the river; not but that I thought it was all right for me to go.

Q. The winter had been quite cold, had it not?

A. Yes, sir; I think so, though I hardly remember that; but I know that there was ice in the river; I know that.

Q. Do you remember about what time you left Hainesport that morning?

A. I should think it was about eight o'clock, but really I can't be certain; I think that it was somewhere between seven and eight o'clock, but I can't really exactly state; I did not come down in the first train; the first train comes down at six o'clock; I took the next train after I had my breakfast.

Q. About what time did you arive in Camden?

A. I suppose—I don't know—nine or ten o'clock; I don't think that we were later than nine, but I don't remember really;

44 I know that I came down in the second train; the first train was an early train; rather too early for me, and I came down in the second train.

Q. Upon arriving there you found no boat at all at the R. R. ferry?

A. No, sir; there was no boat there.

Q. Did you wait long for a boat there?

A. No, sir; I did not wait but a short time, because I wanted to get over into the city.

Q. Did you notice the condition of the river?

A. I noticed that there was ice in the river; that is all. I don't remember that I noticed anything else particularly.

Q. Was there much ice?

A. There was considerable ice in the river.

Q. The river was so full of ice that the R. R. ferry-boats weren't running?

A. I did not wait for them. I had no person with me. I was alone, and there were a number of persons there who started at the same time I started to go to the other ferry-boat. A great many of them. Some that I knew were on the boat. A number of persons that did not wait went up to the other ferry.

45 Q. Were there a good many waiting at the other ferry to go over?

A. Yes, sir; a good many.

Q. Probably a hundred?

A. More than a hundred.

Q. Probably several hundreds?

A. There was more than a hundred I know. I don't know how many. I was in the waiting room, and I did not notice them particularly. We waited there a little bit.

Q. Were there very many who went up to the other ferry with you?

A. Yes, sir; there were quite a number went up.

Q. In a general way can you state how many.

A. I don't know that I could.

Q. Probably fifty went up?

A. Yes, sir; I think quite that many, but I could not say how many went up at all.

Q. Upon arriving at the other ferry was there a boat waiting for you?

A. No, sir; the boat had not come over yet.

Q. Did you have to wait for any length of time for the boat to arrive?

A. No, sir; not such a great while, but I don't remember how long.

Q. Probably half an hour, or as long as that?

46 A. I don't know that it was as long as that.

Q. Some little time?

A. Yes, sir; we had to wait.

Q. When it came over were there many on the boat?

A. When the boat came over—I don't know about that—a gentleman there told me that as soon as the boat landed he would come and let us know; it was not an *an* acquaintance, but a stranger.

Q. Was there a large crowd waiting at the ferry to go over?

A. There was quite a good many. It was just tight. The cars coming up and down you know, and a great many coming down in the cars from below; of course, there would be a good many people to cross the river at that time in the morning; there always is.

Q. But that morning there were rather more than usual at the river on account of the delay of the ferry-boats from the ice in the river?

A. I cannot say what was the cause of the delay. I do not know that there were very many more there than on other morn-

47 ings. I only know that they were there that morning.

Q. When you went into the cabin, did you find it crowded?

A. Yes, sir; there were a great many coming on, and I went on with the others; there were a great many going on the boat.

Q. When you got on the boat, where did you go to?

A. I went to the ladies' cabin.

Q. Did you see any seats unoccupied?

A. There were no seats unoccupied; they were all full.

Q. Occupied by both ladies and gentlemen; seated, I suppose?

A. I expect they were: but really I could not tell you that. I know there were no seat unoccupied. There was no unoccupied seat that I could get, and I had to stand. There were a great many in the cabin; what was outside, I do not know; I did not go to look; I only saw those in the cabin.

Q. Did you go into the forward part of the cabin?

A. I was in the first cabin—the back cabin; the people were moving, trying to push through to the front part towards Philadelphia.

48 Q. The crowd was great in that cabin, and they gradually worked forward?

A. Yes, sir.

Q. Did you notice at the time whether the ice was very heavy in the river?

A. I was not near the window; I was near the middle of the cabin; I could not have seen out of the window if I had tried; there were a great many standing up.

Q. In or —— did you notice whether the boat was obstructed a great deal by the ice?

A. I do not know that it was any more obstructed than it had been before. I don't think that it was. There was a great deal of ice in the river.

Q. Was the boat stopped while crossing?

A. It went very slow several times.

Q. I suppose that you could hardly say from recollection at this time how long it took to cross?

A. No, sir; I could not.

Q. You had several bundles with you?

A. No, sir; I had but one small bundle with me and an
49 umbrella—just a very small package with a strap around it.

Q. That you kept in your hand?

A. That I had in my hand with my umbrella; I had no other packages.

Q. Did you notice any severe shock to the boat before it reached the Pennsylvania shore?

A. Well, just like there is on going through ice, you know, there is always more or less movement in going slower or faster.

Q. None sufficient to throw you down?

A. None at all until we came into the wharf.

Q. When you run into the wharf there was a severe shock, I understand?

A. Yes, sir; some person near the window looked out and says we're are coming near the wharf now; I was not near enough to see myself; I did not offer to move to look because we were tight; a great many people were there, and we were standing very closely together. Those who leaned up against the boat, of course, had rather a better protection. I was out more, rather in the centre of the cabin.

Q. How near the window?

50 A. I could not really tell that. When the shock came it was so sudden that it took me right off my feet as quick as a

flash, as quick as lightning, and I was taken right off my feet and a great many others, we all went down together; a great many others went down at the same time. I was not the only person. The crowd was so great that I was not at liberty to move around.

Q. The crowd was so great that you could not move around?

A. I did not want to, I was trying to stand.

Q. Was the crowd so great that you couldn't move from one cabin to the other without crowding the people?

A. I don't suppose that it was, but I am not in the habit of walking about. I think there was a great many people; it was a pretty tight crowd all around. I went down, of course, and there was some gentlemen spoke about my being very heavy, about my being in the crowd; he spoke particularly about me; he men-
51 tioned a large fleshy woman and asked some of the others to try and get her out, and two gentlemen took hold of me and raised me up.

Q. Did any of the rest of the crowd fall on you?

A. It was all so quick you know, it was hardly a moment, when I discovered what was the matter there came the crowd all down on the floor.

Q. Did they fall down so that any of the others fell on you?

A. Yes, sir; they fell on me; they said that I fell on my right side; this is what a gentleman told me afterwards; some person who seen me.

Q. Did you know the names of any of the others on the boat, except Mr. Sherman, at that time?

A. I did not know Mr. Sherman; he was not an acquaintance; I never saw him before.

Q. Were there none of the others that you knew?

A. There were others on the boat because I was with them on the wharf; I saw them on the wharf afterwards; though none with whom I was intimate; there were several with whom I
52 spoke, just speaking acquaintances, people I had met at my sisters; but there was no particular acquaintance of mine at all on the boat.

Q. Do you remember the names of any of those persons?

A. Yes, sir; I know the names of some of them. Mr. Culin was there; I saw him on the wharf, but he come over in that boat.

Q. He was from Mount Holly?

A. No, sir; he lives near my sister's, about a mile from her house; she does not live at Mount Holly; she lives on a farm near Hainesport; I got on at Hainesport. There were many on the train, but I do not recollect their names—that I knew I mean.

Q. If you cannot recollect I do not wish to burden your mind.

A. Mr. Perkins, my sister's minister, he was on the boat; I spoke to him.

Q. They were not with you?

A. They were not with me; I saw them when we reached the other side; they came across on this boat; I merely spoke to them; there was none that I knew right with me at the time at all.

53 Q. Up to the time of the accident your health had been always good?

A. My health had always been very good.

Q. You had not been under medical treatment?

A. No, sir; not at all; I don't think for two or three years that I had ever had a doctor; it might be longer; I know it was that long; not since Dr. Atlee's death, I never had a doctor to attend me.

Q. You never had a spinal trouble of any kind?

A. No, sir; I can speak truthfully on that point, I never had; I was generally very healthy; I had no physician at all, since—I can put it that far back—since the death of Dr. Atlee.

Re-examined by Mr. CARTY:

Q. I failed to ask you when you were examined before you mentioned the date and said it was the 31st of Jan.; what year was it?

A. It the 31st of Jan., 1881.

Q. Was there any more ice in the river at that particular time than at other times when you had crossed?

A. No, sir; I don't think there was.

54 Q. You had crossed safely at other times when there was a large amount of ice in the river, as much as there was then?

A. Indeed, Mr. Carty, I did not think anything about it; I did not think of any danger in going over, or I surely should not have gone. I did not know whether there was or not. I knew there was ice in the river, and I wanted to go over.

Q. Do you recollect anything about the chandelier being unhooked and of its striking some one on the head?

A. I only heard of that. I did not see anything of that, because it was all done so quickly. Of course I did not know anything about it. It was just as quick as it could be—as quick as you could be taken off from your feet, the shock was so great—when we all went down.

Q. It was near the wharf?

A. It was right near the wharf; right at the wharf, because they then lifted me up and then put me on the side of the boat. Some person got up and gave me a seat. Some gentleman and the ladies helped me up; at least a gentleman and a lady. I never knew who they were.

55 Q. Just state in your own way your general condition since Oct. last, when I finished the examination; from that time to the present time. State where you were and how long you remained there and when you came here where you are now.

A. I went to the Orthopœdic Hospital. The first week I was there—I was in bed ten weeks, and then the doctor allowed me to set up a little. He wanted me to try to get up, and I got up and set up ten minutes the first time, and then he added five minutes to it every day, until I got up to one hour and five minutes; then my back was so bad again that I remained in bed for two or three weeks more. I was very anxious, indeed, to get up, and I thought I would get well if I could only get up. Then he let me sit up a little. I was there sixteen weeks. They only keep you there three months. The

longest I set up there was two hours. That would have been the day that I came away. I was very sick.

Q. Then you were not in bed continually while your were there?

56 A. I was not able to set up more than five minutes at a time. I never was over the sill of the door while I was there, 4 months.

Q. When did you leave there?

A. I left there on the 14th of February. I have been here now nearly eight weeks.

Q. Where were you taken when you left?

A. I was then taken to the St. Joseph's Hospital. They carried me down and put me in a carriage and brought me here, and I have been in this room ever since—that will be eight weeks next Friday.

Q. You are not in a condition to go out?

A. No, sir.

Q. Or to set up?

A. Yes, sir; I set up a little bit this morning, but I did not set up any Sunday morning I set up when I am able. I try to get out when I can, but you see that it hurts my back and my side. I cannot stand up; I have no strength to stand up.

Q. Your right side is the worst?

A. I do not think it is one side more than the other.

Q. Where is your pain?

57 A. It is all the way across my side and my back up to my head.

Q. What do you think of your ability to go out and attend the trial next week?

A. I would say that when I came here I was helped down stairs and put as carefully as possible in a carriage, as carefully as it could be done, and I came here and they put me on the elevator and brought me up here, and it threw me back, and I could not set up up any for several weeks. I was very sick.

Q. You think it would be dangerous?

A. I know it hurt me very much to come here, and I don't know how I would feel if I had to try it again. If it had not been for compulsion I would not have come here, and I would not like to be moved the second time.

And thereupon the said plaintiff's produced as a witness—

CHARLES H. SHERMAN, called by Mr. Carty, sworn and examined.

By Mr. CARTY:

Q. What is your business?

A. I am in the blank-book manufacturing business.

Q. Where do you live?

58 A. I live in Camden.

Q. Did you live there in the beginning of 1881?

A. I did; I have lived there some eight or ten years.

Q. You have been in the habit of crossing the river Delaware?

A. Yes, sir; twice a day; sometimes three times a day.

Q. By what line of ferries do you cross?

A. Always on the West Jersey; at least 95 times out of a hundred.

Q. Do you know the boat Arctic of that line?

A. I do.

Q. Do you recollect crossing on the morning of the 31st of January, 1881?

A. I do.

Q. About what time did you leave Camden?

A. I think it was between 8 and 9 o'clock; a little after 9 o'clock in the morning; I cannot remember now exactly; I have it on my diary; the diary is either at my store or at the house.

Q. You keep a diary?

A. Yes, sir.

Q. Just state in your own way, now, to the court and to the jury the circumstances of your leaving Camden that morning, and
59 your coming to Philadelphia, and what occurred to Mrs. Burton, and everything directly bearing upon the injury to Mrs. Bruton; you recollect that time, and you were present?

A. Yes, sir.

Q. You saw her injured?

A. I did.

Q. Now just state in your own way everything you know pertaining to that particular fact, and nothing outside of it.

A. I came down to the ferry on that morning to cross the river; there were a great many there. There was some trouble up the river on account of the ice; there was an unusual number of people gathered; many had come from the other lines of ferries; they had arrived there before I went on board the boat; I do not think I was detained more than 10 or 15 minutes; we were at the ferry waiting for the boat to start and I was standing; the boat was completely filled, and all the standing room occupied; every carriage that could be got on was piled on the boat; every wagon that the boat would hold
60 was packed on, dovetailed in, you might say, and the passengers were in the same way inside and out of the cabin; we came over very slowly, and when we got most on the other side the boat attempted to run into her slip. I cannot give a better description of the slip then by referring to these two recesses in this wall (indicating). That would just about show the position of the sides of the two slips. The boat occupied a certain position on the river, and I forget whether it was the lower or upper slip which we were attempting to enter; but I think it was the upper slip. The boat came across in this way (indicating), and attempted to get into her slip, and she struck on the corner of the slip, and the stream or tide caught her and swung her around so that she could not get into the slip, and she backed out into the stream, and then made a second attempt, and started to go in, but with no better result; they run caticornered across the end of the slip, and the tide running out caught the stern of the boat and slew her around,
61 and then they backed off again, and they started again to come

into the slip, and it seemed as though they were bound to make it this time, and they seemed to come in with much more force, so that the boat went clear into the slip, and she struck right like that (indicating) up against the bridge with such a great force that there were about a dozen or fifteen knocked down, passengers who were standing in the middle of the cabin. I stood about, perhaps, ten feet from where Mrs. Burton stood. I was leaning against a stanchion at the corner of the wheel-house, or else I probably might have gone down in the same way. She fell, but I do not think any one fell on her. I think there were five or six fell. There was another young man and myself there, and we helped her up. I had no idea that she was so badly hurt as she was; but we got her up, and some lady got up from her seat and gave her a seat on the side of the boat, and she kind of got her breath after awhile.

She could hardly speak for a few minutes, but she came
62 too after awhile, and I asked her then if I should not get her a carriage, it seemed to me as if she was not able to go by herself, but she said that she would take a car, and so I helped her to the cars, and when I got up to the cars I thought she was hurt more than she thought for, and I made up my mind I would not leave her; so I got into the car and took her to Girard College. When she tried to get into the car it seemed as if a knife was cutting her in two, when trying to get her foot on the car. I got her up as gently as I could to the Girard College; then we went in, and one of the assistants came into the room and took charge of her, and then I left; then she wanted to know to whom she was indebted, and I declined at that time to give her my name. Then I left her, and I did not see her again for two or three months. Her sister called at my place and told me how she was. I felt interested in her, and I went to see her. She was then in bed, and the doctors then had given her up, and said that she would not recover.

63 Q. How long after the accident was this?

A. This was two or three months, I should think; I could give you the exact date if it is necessary.

Q. Was she not in bed?

A. She was then in bed and helpless.

Q. Did you know her at all before the accident.

A. I never saw her before that.

Q. Do you recollect seeing her on the boat before the accident?

A. Not particularly; no more than I saw there were very many on the boat; I cannot distinctly remember. I know that she stood almost directly in front of me on a line with me. I would add also that I have been crossing for about twelve years, and I never saw a boat put into a slip like that, and I have seen worse winters than that one; I think eight years ago was a great deal worse. If it had been one of the old boats it would have knocked her all to pieces, coming in as she did.

Q. Do you know whether that boat had made any other trips that morning?

64 A. Yes, sir.

Q. Where do the boats lie?

A. Camden; that is their headquarters.
Q. The boats had made trips across that morning?
A. Yes, sir.
Q. Do you know whether the Arctic had made a trip?
A. I could not swear to it, but I presume she did.
Q. You do not know positively?
A. No, sir.

Cross-examined by Mr. DIXON:

Q. Where were you standing when the boat came in?
A. I was standing at the corner of the wheel-house as you pass between the wheel-house, the partition that separates the outside of the boat.
Q. Were you standing on the inside of the wheel-house?
A. I was standing inside of the cabin. The wheel is boxed in, you know.
Q. Were you in front of it, between the two wheel-houses?
A. No, sir; there is a passageway.
65 Q. Were you where the wagons stand?
A. No, sir; I was in the passageway in the cabin where you pass from one cabin to the other. The wheel-house was on one side, and the partition that separates us from the deck on the other.
Q. Then you were inside of the cabin?
A. Yes, sir; I was inside of the cabin.
Q. Which cabin?
A. The ladies' cabin, on the ladies' side of the boat.
Q. Did you stand there until the boat struck against the wharf in this way?
A. Yes, sir.
Q. You were just up against the wheel-house, were you?
A. Yes, sir; stood against it.
Q. How far would that be from the door?
A. From the front end of the boat?
Q. From the door leading on to the deck?
A. I should state it was about thirty feet.

By the COURT:

Q. Do you mean to say thirty feet from the front door of the cabin?
A. From the cabin door, the front end of the boat as it
66 was coming over the point where I stood, it was thirty feet.

By Mr. DIXON:

Q. You were thirty feet back of the cabin door?
A. Yes, sir; I was about in the centre of the cabin.
Q. Was the cabin filled with people standing up in front of you?
A. Yes, sir.
Q. It was pretty cold, was it not?
A. I cannot remember as to that, whether it was a cold day or not; of course it was a wintery day; whether it was an extremely cold day or not I cannot tell you.

Q. Do you remember whether that was a cold winter or not?

A. Yes, sir.

Q. Do you remember whether there was much ice in the river on that day?

A. There was, I believe, a good deal of ice in the river that day, and had been for some weeks.

Q. It being cold, do you remember whether the front door was open or shut?

A. No, sir; I do not remember that.

Q. How far were you from Mrs. Burton when she fell?

67 A. I should think I was about ten or twelve feet.

Q. Were you leaning against the wheel-house?

A. Yes, sir; standing up with my back against it.

Q. Leaning up against it?

A. Standing with my back against it.

Q. Was any one right against you?

A. No, sir; only those people in front of me; they were mostly women; they were thrown down; I do not think there were any gentlemen who were thrown down.

Q. How many ladies were thrown down?

A. I should think that there were six or eight of them.

Q. Mrs. Burton was the only one that was hurt?

A. The only one that I know of that was hurt.

Q. You helped her up?

A. I did, sir.

Q. As you have said, you escorted her to the cars, and from thence to the Girard College?

A. Yes, sir.

Q. But you did not think it worth while to go and enquire after her after that?

A. Yes, sir; I did.

68 Q. You said you did not hear of her from that time until her sister called?

A. I said I had not seen her, but I had heard from her; there was a young lady who had a situation in Girard College, and I wrote to her to make inquiry in regard to Mrs. Burton.

Q. But you never went up to make a call on her?

A. No, sir; because I learned that she was unconscious.

Q. How many windows are there in the cabin, do you remember?

A. No, sir; but I should think that there were about six windows on each side of the wheel-house; making about twelve windows; it might be fourteen on the ladies' side of the boat.

Q. You think in that cabin there would be about six?

A. Yes, sir; I think there were six or seven on a side.

Q. In standing against the wheel-house were you standing in the passage way which led through the other half to the rear half of the cabin, or were you standing over towards the side of the boat?

69 A. I was standing at the part that led through the passage way.

Q. You were standing on the corner a good deal?

A. Yes, sir; on the corner.

Q. Are you able to fix the time from memory?

A. The hour in the morning?

Q. The morning when you started.

A. I do not think I could now; I could get that from my diary; but it was somewheres between half past eight and half past nine o'clock.

Q. Was the boat crowded when you went on board?

A. Yes, sir.

Q. More than usual?

A. Much more so.

Q. Why?

A. Owing to the number of passengers coming, no doubt, from the other ferry, and also the delay of the boats in making their regular trips at that time in the morning, and the number of men going to their business, a great many accumulated there in that short space of time.

Q. Were the other boats running on the other ferry?

70 A. I think one of the boats was caught in the ice, and the other one was at a slip or on the way.

Q. What boat was caught in the ice?

A. I cannot tell you. It was one of the Pennsylvania boats; being old boats, they could not get through it like the Arctic. That is where our ferry had the best of them that winter.

Q. Do not you know that there was no one of the other ferry lines able to run that day except the West Jersey Ferry?

A. No, sir; I do not know that. I do not think that was so.

Q. How long had you been on board the boat before she started?

A. I suppose it might have been ten minutes.

Q. Do not you know that the passengers from the Pennsylvania railroad had come on to that boat?

A. Yes, sir; I saw some of them.

Q. How was the tide running at the time?

A. The tide was running down, I think, sir.

Q. Was it strong or not?

71 A. Well, it was running about as the tide usually runs on this side of the river. The channel is all on this side. Of course it runs very rapidly—more rapidly than it does anywhere else.

Q. I mean with reference to the day; the tide changes. It does not run at a uniform rate. Was it running rapidly or slowly?

A. I do not know. It was running about as it usually does at that season of the year.

Q. It changes in the course of twenty-four hours?

A. I am not able to say whether it runs more rapidly when it has nearly run out, flooding or not; I cannot tell.

72 CLIFFORD S. SIMMS, sworn and examined.

By Mr. CARTY:

Q. What is your business, Mr. Simms?

A. I am employed by the Pennsylvania Railroad Company.
Q. Where do you reside?
A. At Mount Holly.
Q. Are you in the habit of crossing the Delaware river?
A. Yes, sir; every week day.
Q. Do you recollect crossing on the 31st of January, 1881?
A. Well, I do recollect crossing, particularly on that day referred to here.
Q. Do you recollect crossing on that particular day?
A. Yes, sir.
Q. What boat did you cross on?
A. The West Jersey ferry-boat.
Q. What boat—what was the name of the boat?
A. I do not know the name of the boat. I did not pay any attention. I did not notice when I went on board the boat for certain reasons. I did not notice when I came off. I did not know the name of the boat, to my own knowledge, but I know it was a West Jersey Ferry Company boat.

73 Q. Do you recollect anything that occurred on that morning?
A. Well, the passengers were coming by the railroad from Burlington county, and they could not cross from Camden on the regular boat—the Camden and Philadelphia ferry-boats—that is, the ferry that runs in connection with the united roads, and so most of them went to the West Jersey ferry. This was in the neighborhood of ten o'clock in the morning; between nine and ten o'clock I was in the men's cabins. I had been on the right side of the boat. I paid no attention to the trip—no attention to the ice or anything else. I did not notice anything particular until we got nearly to the slip on the Philadelphia side, when I got up to go on shore as soon as the boat was fastened to the wharf, and I felt a considerable shock; this shock unhinged the chandelier. The chandeliers are attached by rods and with a hook at the top. Then they are guided with three or four chains from one side and the other, and
74 the shock unhinged the chandelier. As it turned over the end of the rod struck my head somewheres, and knocked me across the cabin. As soon as the boat landed I came on to the dock and came up the office, but I did not notice the name of the boat.
Q. Can you fix the date?
A. Yes, sir; I bought a bottle of arnica on my way up to the office, and I find on my account book that I bought that bottle on the 31st day of January, 1881.
Q. Do you recollect Mrs. Burton?
A. No, sir, I do not; I was not in the ladies' cabin; I was in the gentlemen's cabin.
Q. You were in the other cabin?
A. Yes, sir.

Cross-examined by Mr. DIXON:

Q. Have you got your account book here?
A. No, sir; it is merely a little pocket book that I keep my accounts in.

Q. You have no recollection of that day, and no other way of fixing that day?

A. No, sir; I cannot fix the day in any other way; but I
75 remember crossing that day when I was hurt; but whether anybody else was hurt on the boat I do not know; the boat landed with a very violent shock, and that is the main portion that I recollect.

Q. None of the railroad boats were running on that day?

A. No, sir; they did not run on that morning.

Q. Was there any morning after that when they were not running?

A. I think, sir, that that was the only morning that they did not run, but I will not be positive about that.

Q. You were in the cabin at the time they landed?

A. Yes, sir; I was in the gentlemen's cabin.

Q. Was that cabin crowded?

A. Well, yes, sir; I think it was, but I really do not recollect.

Q. You do not recollect?

A. No, sir; I do recollect much about it. I had a seat coming over before we got to the Philadelphia side.

Q. You had a seat, you say?

A. Yes, sir; I had a seat.

76 Q. How far is Mount Holly station from Hainesport station.

A. Hainesport station is about two miles from this side of Mount Holly station.

Q. Was it a cold day?

A. Yes, sir; I think the thermometer was about at zero.

Q. Was the front door of the cabin open or shut?

A. I do not recollect; but I suppose the doors were shut, for it was pretty cold.

Q. You do not recollect that?

A. I should suppose that they would be shut; if they had been open it would have made the cabin uncomfortable; I do not remember whether they were open or closed.

Q. Did you pay any attention to the ice when you came over?

A. I noticed the ice in walking from our depot shed up to the West Jersey Ferry house; the river was pretty well packed with ice.

Q. Was it pretty thick?

A. Yes, sir; I suppose it run from 12 to 15 inches thick; I only noticed it running along Front street; I did not notice it in *in* crossing the river.

77 Q. You say it was 12 or 15 inches thick, and then it was a great deal packed up besides?

A. Yes, sir; piled up, driven together; it had not been disturbed much.

Q. I suppose that we all remember that the winter of 1881 was an extremely hard winter; you recollect that, don't you?

A. Yes, sir; it was very cold.

Q. Do you recollect anything about the tide?

A. No, sir.

Re-examined by Mr. CARTY:

Q. I meant to ask you this question: You described the motion that was made in the attempt to get into the slip.

Mr. DIXON: I think you should have asked the question in chief.

Mr. CARTY: I omitted to ask it, and I leave it to the court.

THE COURT: You have asked the witness about the motion of the boat in going into the slip.

Mr. CARTY: I only want to ask this one question.

THE COURT: He has already told us what he has observed,
78 and all that he observed was that the boat came in with great violence, extreme violence.

Mr. CARTY: I want to know whether or not, in making the regular attempt in crossing, whether the boat was moved backwards and forwards; I want to ask him whether he has seen that.

The COURT: You can ask him that, but I do not know as it makes a bit of difference.

By Mr. CARTY:

Q. Do you recollect anything of that kind?

A. No, sir; I do not recollect anything of that kind.

The COURT: That is enough; it is not material.

WILLIAM CRONK sworn and examined.

By Mr. CARTY:

Q. What is your business?

A. I am — from Philadelphia to Mt. Holly, and from Mt. Holly to Philadelphia back.

Q. You are an expressman?

A. Yes, sir.

Q. You are in the habit of crossing this ferry?
79 A. Yes, sir; every day pretty much, except Sundays.

Q. You cross in the winter time?

A. Yes, sir.

Q. You recollect crossing on the Arctic on the 31st of January?

A. Yes, sir.

Q. What company did the Arctic belong to?

A. It belonged to the West Jersey Ferry Company.

Q. Describe, in your own way, the circumstances; do you recollect Mrs. Burton?

A. No, sir.

Q. You did not see her?

A. No, sir.

Q. Describe what took place on the occasion of that trip on the 31st day of January, in the morning.

A. We came down in the morning, leaving Mt. Holly about eight o'clock, and went into Camden at about ten minutes to nine; we waited for the boat; and there was no boat that came in from the

Pennsylvania shore, and we found out somehow that if we would go to the West Jersey Ferry that there would be a boat that
80 we could cross upon; so we started. I suppose that two-thirds of the people there started and went up to the West Jersey Ferry, and we got on board of the Arctic, where we lay, I suppose, for about ten minutes before she started. We came over the river and had no trouble—not much trouble in crossing—until we got coming into the slip. She made one move in, and made a miss of it that time, and backed again and started another time, and the second time it was a failure, and the third time she came right into the slip with a force such as knocked down, at the least calculation, as much as fifty persons on the boat.

By the COURT:

Q. How many?

A. I judge there were fifty went down there altogether, but I will not say positive; but that was my opinion.

By Mr. CARTY:

Q. Where were you standing?

A. I was standing right by the engine-house door, standing on the deck out front.

81 By the COURT:

Q. You were not in the cabin?

A. No, sir; I was out on the deck right by the engine-house door.

By Mr. CARTY:

Q. Could you see into the ladies' cabin?

A. No, sir; not from where I stood; but after I came out they said there was some lady who fell down and was hurt. I went to see, but I did not know her, and I would not know her if I saw her to-day. I saw that they helped the lady up.

Q. Where were the people that you saw fall?

A. Right on the bow of the boat.

Q. Outside of the cabin?

A. Outside of the cabin; yes, sir.

Q. Could you see the engineer from where you were?

A. Yes, sir.

Q. Do you know anything about the signals or orders given to start or stop the boat?

A. I have often heard them. I know the signals. I heard them coming over.

By the COURT:

Q. The signals this morning; do you know anything about
82 them?

A. No, sir; not on that morning in particular; but I can say that I know the signals.

By Mr. CARTY:

Q. I only ask you if you recollect the signals given that morning?

A. No, sir.
Q. The boat finally got into the slip?
A. She came in all right afterwards.
Q. She got in?
A. Yes, sir; she came in with a pretty big bump.
Q. But she got in?
A. Yes, sir.

Cross-examined by Mr. DIXON:

Q. How do you fix the time—the 31st of January—how do you fix the day?
A. How do I fix it? I do not think I have been asked that question; if I am, I will answer it.

The COURT: You were asked that question.
The WITNESS: It was on Monday, the 31st day of January.

By Mr. DIXON:

Q. I know it was on Monday, the 31st of January, but how do you know it?
83 A. Because there was a great deal of trouble, and I knew that on Monday we had made up our minds that we were going to have trouble in crossing the river. That is the only way I could get at it.
Q. How is that?
A. We made a remark coming down in the cars that we should have trouble in crossing the river, which we did; we could not get over in our line of boats, and we had to go to the other ferry.
Q. But how do you know that the 31st day of January was Monday rather than Tuesday; was it by looking at the almanac?
A. I have never looked in any almanac, but I know it was on Monday, the 31st of January.
Q. How do you know that Monday was the 31st of January; can you tell me what day of the week the 31st of January, 1880, was?
A. I do not know that I could; I could tell by looking in the almanac.
84 Q. How do you know that the 31st day of January, 1881, was Monday, when you cannot tell us what day of the week the 31st day of January, 1880, was; can you tell us what day of the week the 31st day of January, 1882, was?
A. No, sir.
Q. If you cannot tell us what day of the week the 31st day of January, 1880, was, or what day of the week the first day of January, 1882, was, how can you tell us that the 31st day of January of 1881 was on Monday?
A. Well, I looked; as I told you, we made the remark that it was Monday, the 31st of January; we made that remark, several of us.

By the COURT:

Q. When?
A. In crossing on the boat since.

By Mr. DIXON:

Q. That is, you made the remark in coming down in the cars that morning; that this is Monday, the 31st day of January, and we will have trouble in crossing, and that is the way you remember it?

A. I say we made that remark; that we would have con-
85 siderable trouble in crossing the river.

Q. But did you make the remark that this is Monday, the 31st day of January?

A. Well, I have since, but I did not on that morning; I do not think I made that remark that morning.

Q. Are you able to give any explanation of how you fix the day, by the day of the week?

A. Well, I could do it by looking in the almanac, or if I was at home and had my book, I could show you pretty quick. I have not my book here.

Q. You cannot do it now?

A. No, sir; but I could do it by my book, which is at home. I have a book that I keep my accounts in every day. I keep it very straight, as near as I can tell.

The COURT: Very well, you have answered the question, do not talk any more.

By Mr. DIXON:

Q. Were you standing in among the wagons?

A. No, sir.

Q. Where were you standing?

86 A. I was in front; I stood close by the engine house door.

Q. How far is that beyond the front door of the cabin?

A. Well, I should judge it was about six or eight feet in front of that door.

Q. So that the cabin on both sides would shut off your view so that you could not see?

A. I could not see in the cabin.

Q. Were you leaning against anything?

A. No, sir; not to my knowledge, because I was bracing myself for the shock when it would come in.

Q. How did you brace yourself?

A. The same as any other party would do if they thought they were coming into a hard shock; we do that every morning pretty nearly when we are likely to come in pretty hard.

Q. That is, you were planting your feet and getting your feet in a position?

A. Yes, sir.

Q. Were you leaning against anything?

A. No, sir.

Q. Were you upset?

A. No, sir.

87 Q. Do you mean to say that fifty men in front of you fell down flat on the floor?

A. I said I believed that there were fifty men fell on the front part of the boat that morning—fifty persons.

Q. Can you name one of them?

A. No, sir; not in particular.

Q. Can you name them in general so as to name them?

Witness does not answer.

Q. Can you name them at all; if so, name any of them who fell?

A. I would not like to say I could; I think there are one or two in the room that I could mention that went down.

Q. Suppose that you try and see whether you can.

A. There is a witness here; I do not know as I ought to interfere with his statement.

Q. Now, make an effort, and see if you can do it.

A. No, sir; I will not do it, because there is a witness or two who can speak for themselves more accurately than I can.

By the COURT:

88 Q. The question is whether you can name anybody that you saw fall?

A. I think I saw Mr. Schuyler fall.

By Mr. DIXON:

Q. He was on the boat; one of the fifty?

A. He was one of those who fell.

Q. Mr. Schuyler fell?

A. Yes, sir.

Q. This gentleman here (indicating)?

A. Yes, sir.

Q. Any one else?

A. No, sir; because there were so many there I did not know them.

Q. The question is whether there was any one else in the room whom you saw fall?

A. No, sir; I would not say that I can name any one else.

Q. Were there many passengers on board that morning?

A. There was hardly standing room.

Q. Were there many wagons?

A. Yes, sir; the wagons were crowded very closely together.

Q. How far did they come out in front; ordinarily, they stand near the middle of the boat as possible?

A. Yes, sir; they fill the passageway.

Q. How far did they come out towards the front of the boat that morning?

89 A. The passengers took the front of the boat; I am positive of that; and the wagons did not come up as far as they generally do.

Q. They were not as far forward then as the engine-house?

A. Most generally they come up as close to the chain as they can, but that morning the passengers were so thick on the front part of

the boat that the wagons did not come up as far as they generally do.

Q. What made you brace yourself that morning?

A. I do that pretty nearly every morning I cross — the boat; I can always tell when the boat is going to receive a shock. If persons do not do that they will get a fall when the boat strikes the slip. The boat in striking the slip will cause them to fall.

NATHAN S. SCHUYLER, sworn and examined.

By Mr. CARTY:

Q. Where do you reside?

A. At Mount Holly, New Jersey.

Q. Are you in the habit of crossing the Delaware river — ferry-boats?

90 A. Yes, sir.

Q. Which ferry?

A. The Camden and Philadelphia ferry.

Q. Do you recollect this morning that has been spoken of here; the morning of the 31st of Jan., 1881?

A. Well, sir, I cannot specify the dates at all; I remember that morning Mr. Simms spoke about being struck; if I saw him struck.

Q. Were you on the ferry-boat that day?

A. Yes, sir.

Q. What boat?

A. The Arctic, of the West Jersey ferry.

Q. Please state what took place from the time the boat started until she reached Philadelphia.

A. I went into the gentlemen's cabin and sat down. I saw that that there was no chance going over on our ferry, and that the boats on the West Jersey ferry were running, and I went up there and went on board and went into the cabin and sat down. The boat did not seem to have any trouble at all until they were coming

91 into the slip on this side, that I could see. I did not get up because the boat was crowded, and I had something to take care of. I just sat still, and the boat struck once or twice, and unhung the chandelier and struck Mr. Simms. I saw him and was going to his assistance, and several other gentlemen went, and I saw another gentleman, by the name of Wm. C. Littleton, he was struck and bleeding; I did not see him hit, I only saw him afterwards.

Q. Was he on the bow of the boat?

A. Mr. Cronk was; he could not see me, because I was in the gentlemen's cabin. In the front part of the gentlemen's cabin, setting down; he was mistaken in relation to that, in relation to my falling when the boat struck the slip.

Q. Was the boat crowded?

A. Yes, sir; the boat was full.

Q. Were people standing?

A. Yes, sir; they were standing in the cabin. I don't know how many were on the front part of the boat.

Q. They were standing in the gentlemen's cabin?

92 A. Yes, sir.

Q. Were all the seats occupied?

A. The seats were all occupied, and a number of people were standing; the boat was crowded; they were not making the time that they should make; that is, making regular trips, and two-thirds of the people were coming from other ferries, and that is what caused the filling up of the boat more than usual.

Q. Did you see anything of the accident to Mrs. Burton?

A. I did not.

Q. Did you see her at the time of the accident?

A. No, sir.

Q. You did know of the accident?

A. Only what I heard.

By the COURT:

Q. Did you hear anything at the time of this accident?

A. Yes, sir; I heard of it; I did not know that I could be of any service, and there were a good many there, and I had my business to attend to.

By Mr. CARTY:

Q. What did you hear at the time?

A. I heard that there was a lady hurt in the ladies' cabin.

93 Cross-examined by Mr. DALE:

Q. You usually cross by the Camden and Philadelphia ferry?

A. Yes, sir.

Q. Why did you not cross by that ferry that morning?

A. I will tell you the reason that I did not; there was no other boat in sight, and I wanted to get to Philadelphia; I was in a hurry to get over.

Q. Why wer-n't the boats running?

A. There was a considerable quantity of ice in the river; I suppose that was the reason.

Q. Were you in the habit of going over every day?

A. Yes, sir; except Sundays and holidays.

Q. Do you remember whether there was any other boat that winter that could not cross?

A. I remember that time in particular.

Q. There was a good deal of ice that winter?

A. There was a good deal of ice; I went back on the Camden and Philadelphia ferry.

Q. That morning was the only time that you could not cross on that ferry?

94 A. The only one we crossed when I came down. I cannot tell you what transpired before I came down, and I do not know what transpired after I came over; that was the only time on that occasion on the arrival of that train.

Q. Did you notice the condition of the river as to the ice?

A. There was a good deal of ice; several boats in the river; the boats did not seem to make any headway at all.

Q. They were stock in the river?

A. Yes, sir; they did not seem to make any headway at all.

Q. Do you remember how thick the ice was?

A. No, sir; I know the ice was very thick that winter—a year ago.

Q. The cold began very early in the year that winter, did it not?

A. Yes, sir; I think it did. I think it began about the first of December that winter and kept on.

Q. Was the ice piled up in the river?

A. In some places very much.

Q. Did you notice the condition of the ice about the slip when you came in?

95 A. Well, there was a good deal of ice there, I think. I only saw it after I got out and went on the bow of the boat. I sat still in my seat. I did not get up nor move about. There were a good many there; I remember that. I preferred to keep my seat. I always do that in case of the boat running into a field of ice. They run into fields of ice and throw you off your feet.

Q. Is it possible to go against a field of ice without jarring the boat?

A. No, sir; I do not think it is; not in a large field of ice or running into a slip ordinarily without looking for it; it will knock you off your feet.

Q. Did you notice the tide that morning?

A. No, sir; I did not notice the tide, whether it was running in or running out.

Q. You saw considerable ice?

A. Yes, sir.

Q. Was it in the dock?

A. I saw it outside the slip and all around.

Q. Where does the channel run in the river?

96 A. The channel is on the Pennsylvania side. I think it runs near to Philadelphia. I think it runs nearer Philadelphia than Smith's Island. I think it's near the end of the pier.

Q. Do you know, as a matter of fact that it runs right outside of the slip?

A. No, sir; I do not, as a matter of fact, know it; but I suppose it does.

Q. Did you notice the eddies about the end of the wharf?

A. No, sir; not particularly.

Q. You had no personal knowledge of that?

A. No, sir; I had no personal knowledge of that at all.

97 EZRA E. TRICKETT affirmed and examined.

By Mr. CARTY:

Q. What is your business?

A. I am employed by the Pennsylvania R. R. Co.

Q. Have you been in the habit of crossing the Delaware river by the ferries?

A. Yes, sir.

Q. State now the circumstances occurring on the occasion that has been referred to here; do you recollect it?

A. I do, sir; I was on board the Arctic on the morning of the day in question. I went up there to cross on that boat on account of the disability that has already been stated. I do not remember at what time we started to cross the river, or what time we landed, but I think that I got to the Pennsylvania R. R. office at about half past ten o'clock.

Q. State what took place from the time you started from the other side till you got to the Philadelphia side.

A. I went up there and got on the boat and entered the
98 ladies' cabin, and I remained inside towards Camden. I stood up part of the time and part of the time I sat down; whether I stood up from chance or whether I could not get a seat I do not remember, for part of the time I know I was standing.

Q. What part of the cabin were you in?

A. That was the back part of the cabin.

Q. Go on now in your own way.

A. Then when the boat struck I noticed there was a great shock, but as I was sitting at that time I did not feel any inconvenience from it at all; I just kept my seat until she struck the wharf and they made the platform fast; then I got out and went ashore. I noticed, however, as I passed through the cabin towards Philadelphia that there was a lady sitting there on the river side of the boat—that is, the side next to the river—who appeared to be weakened and considerably hurt, I thought. I saw a great many around her, and as I was in a great hurry to get ashore to get to my work I did not tarry. I did not learn her name, and there was no one on the boat
99 that I was acquainted with, except a gentleman, Mr. Perkins, a young clergyman.

Q. Was he on the boat?

A. Yes, sir; he was on the boat.

Q. Did you learn the name of any one from him?

A. I did not; I did not learn the names of anybody at all; I knew no one but Mr. Perkins.

Q. Was the boat crowded or not?

A. That I cannot say, because I cannot remember positively. As I said, I do not know whether I stood from choice or because I could not get a seat.

Cross-examined by Mr. Dickson:

Q. Was there any other gentleman than yourself sitting in the ladies' cabin, do you remember?

A. I think that this Mr. Perkins and myself were the only gentlemen sitting. I did not notice any one else.

Q. I mean near you?

A. Yes, sir; I was talking with him—that is, Mr. Perkins.

Q. You cannot say positively that there were not other gentlemen in that part of the cabin sitting down also?

100 A. No, sir; I cannot say about that

Dr. HERMAN S. BISSEY called and examined by Mr. CARTY:

Q. What is your business?
A. Practicing medicine.
Q. Did you attend Mrs. Burton?
A. Yes, sir.
Q. When; beginning in the year '81?
A. Yes, sir; I was called in to attend her.
Q. State when and where and give us all the circumstances connected with it?
A. I was called to see her about noon on the 31st day of January, 1881.
Q. Where?
A. At the Girard College. I found her in convulsions—blind and unconscious—and I made inquiries as to what brought this on, and I was told that she fell on the ferry-boat and she was unconscious until brought up to the college. She was taken with spasms and convulsions.

By Mr. DICKSON:

Q. She was unconscious?
101 A. She had been partly conscious when brought away.

By the COURT:

Q. She was unconscious when you saw her?
A. She was unconscious when I saw her and had spasms. The spasms lasted from a half a minute to two minutes; then she would rest for a short time, and then go off into a spasm again; I saw her three times that afternoon, and she was blind and in spasms; these spasms came on frequently.
Q. How long was she blind?
A. She was blind for over two weeks; she was taken with spasms a number of times during the day, until the 6th of February, when she had the last spasm; her sight returned on the 14th day of February; the first she began to see was on the 14th day of February; I noticed particularly she saw first things in the upper part of the room, the top of the mirror, &c., and in order to test her sight I stood up in a chair near the bed, and she said she could see
102 my head; she complained during intervals of her spasms; she was partially conscious, only partially so; she would never give me a sufficient answer; she only complained of pain; she complained a good deal, and she said that her side felt bad, but she did not know where; she complained of very severe pain and had a vomiting spell; I attended her for fully four or five months, when I left her; she was taken to the hospital unable to walk, stand, or even sit up.

By Mr. SULTZBERGER:

Q. From your observation of her what do you think was the cause of her injury?
A. I examined her the second time; I went there in the afternoon; I examined her closely, and I came to the conclusion, the

only conclusion we could come to, that she was suffering from concussion of the brain and spinal cord, weakened, spinal concussion, and the convulsions that came on two hours after she was injured; she was hurt between ten and eleven o'clock; I saw her between twelve and one o'clock; the convulsions that came on afterward I attributed to the slight ef-usion of the serum or blood upon the brain, which brought on the convulsions which she had very often.

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Q. Are these injuries apt to be easily cured, or are they permanent?

A. In old people—people 68 years old—they are very difficult to cure. I was asked my opinion if she would get well. I never told my opinion. It is impossible to tell whether she would get well, and I would not tell her, so that I am not prepared to tell now.

By the COURT:

Q. You are not prepared to say whether it is probable that she will recover?

A. Probable. I have seen her and examined her for a long time. The last time I saw her she seemed to be as bad as she did when I left her.

By Mr. SULTZBERGER:

Q. That was how long ago?

A. That was last Friday I saw her. I saw her several times at the Orthopædic Hospital, and I saw her twice at St. Joseph's.

Q. Do you think her chance of recovery any better now than it was then?

A. I do not think that it was any better.

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Cross-examined by Mr. DICKSON:

Q. You say she is 68?

A. Yes, sir; as near as I can tell that is the age she gave me when I asked her.

Q. Would injuries of this kind be likely to occur from merely being thrown off from her feet and falling upon the floor like that?

A. Yes, sir; injuries come from accidents of that kind; it would happen from the vibration of the brain and spinal cord; there can be capillary hemorrhage and ef-usion of serum and inflam-ation set up, and the trouble come on in that way.

Q. Would such results follow?

A. Yes, sir; they do.

Q. Not unless there is some constitutional predisposition?

A. Yes, sir; they can and do.

Q. We would all be liable to this injury stepping down from a step or stepping across the floor or anywhere else, or from riding in a railway train?

A. A person may fall from a high building and not be hurt, and they may have a slight fall and injure themselves severely; Mrs. Burton was unfortunate in sustaining this injury from her fall, but she did not fall very far.

105

Dr. CHARLES K. MILLS sworn and examined.

By Mr. CARTY:

Q. State all the circumstances in regard to Mrs. Burton from the time you first saw her until the last time.

A. On February 9th, 1881, Dr. Bessy asked me to see Mrs. Burton in consultation. I went with him to the Girard College; I saw her there, and found her suffering from certain symptoms of an injury of the brain and spinal cord. She had at that time great pain, and she was blind; she was in a state of imperfect consciousness; her hearing was somewhat defective, although she could hear. Her body was sensitive—very sensitive from various reasons, particularly in the region of the spine and the limbs. She had partial loss of power in her limbs, particularly in the lower limbs and in one of the upper limbs—the arm of one side; also some loss on both
106 sides. She complained, also, when questioned, of headache, and her answers were such as to indicate that her mind was not working well, although she had sufficient consciousness, and she said that she was in pain. This was the general condition in which I found her. I gave Dr. Bessey my opinion as to the nature of the case, and he prescribed for her.

Q. Just state now what your opinion was and is.

A. My opinion is now, and was at that time, from the history of the case which was given to me by him, and also by persons in the room, and from the condition in which I found her, and from the symptoms of which I have spoken, that she was suffering from the effects of cerebral of spinal concussion, which cerebral spinal concussion had produced certain definite changes in the membrane of the brain, and spinal cord and brain itself, in my opinion, as the result of this concussion. Some effusion of blood had taken place at more than one point, from the whole history of the case.

Q. What is your opinion in regard to its permanency from
107 the circumstances surrounding Mrs. Burton's age and condition?

A. My opinion is that she will never recover entirely from the effects of this condition or from the effects of this injury; that she will be permanently effected as the result of it.

Q. In what way?

A. Probably she will be permanently afflicted with reference to the use of her limbs, and so far as motion is concerned, and probably will always suffer from more or less pain and more or less sensitiveness from ordinary impressions.

Q. Have you seen her lately?

A. I saw her once last week on Friday.

Q. What was her condition then as compared with any time previous in the history of the case so far as your own knowledge extends?

A. Most of the symptoms were the same; she still had loss of power in both legs and some loss of power in her arms, and she still had this extreme sensitiveness of the skin over the spine and limbs

at different parts; she still complained of headache and her
108 side was still effected, but she was not blind—she was not blind at the last visit. Her sight, however, was not good; her hearing is still effected, more particularly in one ear than in the other. Her mental condition is better than when I saw her; otherwise her symptoms remained very much the same as it was at that time. There certainly has been some improvement in some respects.

Q. Where was she when you saw her last week?

A. I saw her last at St. Joseph's Hospital.

No cross-examination.

Dr. JOHN J. REESE, sworn and examined.

By Mr. CARTY:

Q. What is your business?

A. I am a physician.

Q. Do you occupy any position in connection with your business?

A. I am one of the professors at the University of Pennsylvania.

Q. On what subject?

A. On medical jurisprudence.

Q. You do know Mrs. Burton?

A. I have known her since some time in January of this year, sir.

Q. Where?

109 A. At the St. Joseph's Hospital; I am one of the physicians attached to the St. Joseph's Hospital; my term of service commenced on the first day of January this year, 1881; I have only known her since then.

Q. Please state your knowledge of the history of Mrs. Burton's case, as far as you know.

A. She came into the St. Joseph's Hospital, I think, about the middle of January; I think, I don't remember exactly, it was some time about that time; I don't remember exactly; I had been in charge of the hospital for some time. She was brought in in a carriage, and was taken up in a litter or stretcher, up to her room, and I examined into her condition at my next visit, and found her to be very much in the condition which Dr. Mills has stated. I found her the other day in a very bad condition; she was unable to walk; her general physical appearance seemed to be excellent. She was rather a large woman, weighing from 140 to 150 pounds. Her intelligence seemed to me to be quite perfect. I had never seen her before. I knew nothing of the case. She was unable to walk, and she
110 complained of a great deal of pain in her body and in her head. I did not see any trouble about her vision, and I did not examine her about it; she never complained about her vision; she lay in bed the most of the time. We got her up nearly every day for a half an hour or so. I do not think she ever walked, except with one or two assistants, and then she would take one or two steps, with the aid of another person, leaning upon some person or on a chair or table or whatever happened to be about, and she had remained very much in that condition since then; that is, since she

came in. I cannot say that she has been very much improved by the treatment to which she has been subjected. She had been previously in various hospitals, so she told me; the Orthopædic Hospital, the Woman's Hospital, and some other hospital; but I am not certain about that. I have known her since then until the last day of March, when my term of service expired.

Q. Now, from your knowledge of the history of the case, will you please give us your opinion of her condition, and the cause of that condition.

111 A. I can only know the cause from what I have heard here to-day. I judge, sir, the cause was sufficient to have produced a very decided concussion of the brain and spinal marrow. She was suffering from the effects of that concussion.

Q. What with regard to the permanency of the injury in her condition and at her age?

A. I should be afraid that the effects would be permanent, not so much upon the brain as upon the spinal marrow; the effects would be shown in her inability to walk or move her lower limbs, she has some trouble in *in* moving one of her upper limbs, I forget which it was, and a very decided movement of her lower limbs. In all other respects she was a perfectly healthy woman. She seemed to me to be so.

Cross-examined by Mr. DICKSON:

Q. Could such a fall as you have described here this morning be sufficient to produce such effects?

A. I think so, sir; the concussion seems to have been a very severe one.

Q. She did not receive a concussion, according to the testimony, she simply had a fall.

112 A. I judge from the effect of the after convulsions, and her inability to see, and her inability to move.

Q. What would follow, in your opinion, from a fall from a platform or a fall of any one on deck, I mean a simple fall, a simple losing of the balance and falling down on the floor, would that be sufficient, I mean without striking the head?

A. It would depend altogether on how severe the fall was; she was not hurt from the fall, but from the concussion; it was the concussion that produced all the effects upon the spine.

Q. We can readily understand if she would fall her whole length and strike her head that that might be sufficient to produce it, but falling down in a crowd in that way would you suppose that that would be sufficient to produce it?

A. It might; it might produce a concussion of the brain. It is not necessary that the head should strike to produce a concussion, it can be produced by striking the lower part of the spinal cord, and the blood being transmitted to the brain, produces all

113 these effects that a blow or striking on the head would produce.

Q. That would also be caused by one stepping out of the cars, and stepping a few inches more than she expected to step.

A. Yes, sir; concussion might be produced in that way.

Q. There are recorded cases of that kind?

A. There are; yes, sir.

Q. She might, therefore, in stepping out of the cars a day or two previous have had this thing occur, and this develop afterwards.

A. No, sir; I think not.

Q. Are there not recorded cases—are there not in fact many cases of this kind, where the effects have not been developed immediately, but where the party walked around and these symptoms came on later?

A. The effects of concussion are almost immediately shown, and the after effects show themselves days afterwards; for instance, there may be a resulting concussion, and the loss of vision by a rupture of the small vessels, and effusion of blood may gradually take place and accumulate so as to produce apoplectic effects by pressure,
114 but the effects of concussion are so far immediately so as my observation goes.

Q. Are there not plenty of reported cases in which the effects were not developed until some days or some weeks afterwards?

A. The after effects may not be developed until, as I said, for perhaps days afterward, but the immediate effects are those of that of insensibility to pressure upon the lower portion of the spinal column or upon the head, the effects are as I stated, the person is unable to make any movement, and perhaps in a few months they can move about, then the after effects, to which I have alluded, come on.

Q. Then, in your opinion, such a fall as this might be sufficient?

A. I think so.

115 Mrs. Rebecca K. Shoemaker, affirmed and examined.

By Mr. Carty:

Q. What relation are you to Mrs. Burton?

A. I am her sister.

Q. Just state your knowledge of her condition subsequent to the time of this accident from the time you first saw her, and her condition subsequently, as far as you know it.

A. She left sister's in the 8.05 train in the morning.

A. Speak only of what you know yourself.

A. I was sent for on Tuesday morning, Feb. 1st, and I came that morning and found her insensible.

Q. Where?

A. At the Girard College. She was in spasms.

Q. How long did that continue?

A. I should think it continued between three and four minutes; she could not see for a long time.

Q. Did you remain with her?

A. Yes, sir; I was with her for seventeen weeks.

Q. When she left Girard College where did she go?

A. To the Woman's Hospital.

116 Q. After she left the Woman's Hospital where did she go?

A. She came from the Woman's Hospital to sister's, whereI live.
A. From there where did she go?
A. To the Orthopœdic Hospital.
Q. From there where did she go?
A. To Saint Joseph's Hospital.
Q. Have you seen her lately?
A. About four weeks ago.
Q. What was her condition then?
A. She told me she did not feel any better; she was suffering very much with her head on that day.
Q. Has she any means?
A. No, sir.
Q. She is entirely dependent?
A. Upon her family
Q. What was her position before the accident?
A. She was an assistant matron at the Girard College.
Q. What was the condition of her health before the accident?
A. Very good.
Q. Physically and mentally?
A. Yes, sir.
Q. Did you ever know of her having any illness?
A. Not for many years.
Q. Did she have any disposition to apoplexy and paralysis?
117 A. None that I ever knew of.

No cross-examination.

ANNA P. ELLIS sworn and examined.

By Mr. CARTY:

Q. What relation are you to Mrs. Burton?
A. Niece.
Q. When did you first see her after the accident?
A. In the afternoon of the day that it occurred?
Q. Where?
A. Up at the Girard College.
Q. What was her condition then?
A. She was lying in spasms.
Q. Did you remain with her for any time?
A. Yes, sir; I remained with her until about eight o'clock in the evening. She was in spasms. She did not continually have them, but she would have them come on occasionally. She would come out of one and go into another. She could not see, and did not know anybody.
Q. Did you remain with her subsequent to that?
A. No, sir; I would only go up there every day or so.
Q. Did you visit her at the different hospitals?
118 A. Yes, sir; frequently.
Q. What was her condition in these respective places?
A. She would get rather better, but she could not walk; only make a few steps with assistance.

Q. What was her general condition as to her health prior to the accident?

A. Very good, indeed; uncommonly so for a woman of her age.

Q. You knew her for a number of years before; I mean, did you see a great deal of her?

A. Yes, sir; I have seen her always a great deal. She always came to our house a great deal.

No cross-examination.

Plaintiffs close.

119 Mr. DIXON opens for the defendant.

JOHN G. HUTCHINSON, sworn and examined by Mr. DIXON:

Q. What is your position?

A. Superintendent of the West Jersey Ferry Company.

Q. How long have been acting in that capacity?

A. Twenty-six years.

Q. Between what points do your boats run?

A. Between Market street, Philadelphia, and Market street, Camden.

Q. Do you know anything about the construction of slips or wharves there?

A. I do, sir.

Q. How.

A. I built them all pretty much, or I superintended the building of them.

Q. How long since they were last rebuilt?

A. Those on this side of the river were rebuilt three years ago.

Q. Have you had an opportunity of seeing how slips of this kind ought to be built?

A. Yes, sir.

Q. Are you familiar with the construction of other slips?

A. Yes, sir.

Q. How do they compare, in your judgment?

120 A. They are as good as any in the United States, in my judgment; they are not quite as large as those in New York, and there are some a great deal smaller, but there are none better.

Q. Is there any way in which they could be improved?

A. None, in my judgment.

Q. Please describe them to the jury.

By the COURT: Is there any need of doing that?

By Mr. DIXON: I want to describe them; it will not take long.

By the WITNESS: There is a row of piles driven with strong string-pieces and planked up with pieces of plank four or five inches thick. They will spring. They have an elasticity; otherwise, if the piles were not there, the boats would strike against the wharf. They are used to ease up the concussion of the boat as the boat goes in.

Q. How about the boats like the Arctic, in particular; what was the character of that boat?

A. That boat was a new boat; an iron boat, very substantial, and a strong boat; a good boat in the ice and most anywhere you would take her—quite as good as any.

121 Q. What line do you pursue in getting from Camden to Philadelphia; at that time, I mean?

A. We come across the river close to Smith's Island, and come down out the other side, then right close to the upper end of the island.

Q. You came by the upper end of the island?

A. Yes, sir; around the upper end of the island.

Q. Where is the principal current in the Delaware river?

A. The principal current is on this side right alongside of the wharf, and the deepest water is right along the line. There is fifty-two feet of water at the end of our wharf, and a little over.

Q. Does your slip extend out as far as the port warden line allows?

A. As far as the port warden line.

Q. You say it is carried as far as the port warden line?

A. Yes, sir.

Q. Do you remember this particular morning of the 31st of Jan., 1881?

A. Yes, sir.

Q. What kind of a winter had it been?

122 A. It had been a very rough winter—a very cold winter, and a good deal of ice.

Q. How was it on that day?

A. It was very bad.

Q. Can you describe it?

A. The ice came up on Sunday afternoon, and this Monday morning, the 31st day of Jan., it came up so as to prevent the boat from running; there had been a good deal of ice that winter, the ice being fast above the tide carried it up above Cooper's Point, when it was caught and piled up very heavily. We had a good deal of trouble Sunday afternoon. I think we were an hour in making one trip across—right across the river. The crossing the Delaware at that time by the Arctic on Sunday to Phila., we had great difficulty. When the ice came up it made a bridge, and it swayed backwards and forwards during the night. The next morning there was a perfect jam. The boat ran that night with great difficulty; but at last we got across the river. The Pennsylvania followed the Arctic, and the Pennsylvania was left lying there and could not get

123 up to the wharf. The Pennsylvania followed the Arctic as far as it could, and she did not get home until some time after that. She stopped and could not move, and the Pennsylvania is considered a very good boat.

Q. The Pennsylvania is a boat belonging to the Pennsylvania and United Railroad Companies?

A. Yes, sir.

Q. Then I understand the river was fast up as far as Cooper's Point?

A. Yes, sir.

Q. You say that the ice came up with the tide and could not get beyond that point?

A. It was fast there.

Q. What was the thickness of the cakes of ice?

A. I suppose the average thickness was from ten to twelve inches inches thick, clear frozen.

Q. How many cakes would be piled up one top of the other?

A. Some places there would be three or four feet thick deep beds of ice; you could not see the water where the ice was jammed up.

Q. Do you remember this particular passage?

A. No, sir; I do not remember that particular passage or
124 trip. I did not notice anybody hurt on the boat until the afternoon. I found out, although I was on board of the boat on both sides of the river.

Q. Were the other boats running at all that day?

A. I think the Cooper's Point boat got fast in the river and laid there all day. I think the Federal street boats, one of them, made one trip and the other one made one trip in the afternoon, and that was all the trips that were made.

Q. These are the railroad boats?

A. Yes, sir; that was my recollection, they were the railroad boats. One of them laid at the wharf above all day; they could not get her off.

Q. She was between Market and Arch?

A. No, sir; she laid just about Market street.

Q. She had wagons on board of her?

A. She had wagons on board of her and could not get anywhere until after night, until the ice-boats came up and cleared the channel.

Q. The passengers were left off by a gang-plank on to the wharf?

A. Yes, sir; the passengers were allowed to get off.

Q. Your boats were very much crowded on that day?

125 A. Very much indeed.

Q. How many passengers, as compared with your usual numbers, did you carry that day?

A. 15,400 on that day, and I suppose we carried four or five hundred who did not pay anything; there was such a crowd that we could not keep them back.

Q. Had you a special police to keep the crowd back?

A. We had, but we could not control the crowd; we could not control them at all.

Q. What is the usual number you carry?

A. About three thousand a day.

Q. You carried that day about five times the usual number?

A. Yes, sir; generally we have three boats, that day we had only two boats running.

Q. You usually had three boats running?

A. Yes, sir; but our third boat was not able to run, it had not

power enough to go through the ice. Captain Leonard was with this captain at the time.

Q. How many passengers do you carry in a year?

A. Millions.

126 Q. You have been carrying them for some years back?

A. Within the last two or three years.

Q. Did you ever have any other accidents before?

Objected to.

Q. What was the name of the other new boat?

A. The Columbia.

Q. How did that compare in strength with the other boats on the river?

Objected to.

Q. Was Cap't Leonard on the boat?

A. He was.

Q. I mean was he captain of this boat?

A. Capt. Hillman was the captain of the Arctic.

Q. How long has Capt. Hillman been in your employment?

A. Twenty-four years.

Q. Every captain is required to have his certificate?

A. They all have a certificate from the United States inspector.

Q. He had one I suppose?

A. Yes, sir.

Q. Had you been in the habit of observing him so as to know him?

A. Yes, sir; I knew him; I always knew him to be a care-

127 ful man; he was a very careful, cautious man; if he had not been I should not have wanted to keep him long.

Q. As far as you know, he was a cautious and skilful captain?

A. Yes, sir; he is the captain of one of our boats, and I would trust him with a boat as quick as I would trust any other man that I know.

Q. Captain Leonard is a competent man?

A. Yes, sir.

Q. Captain Leonard was assisting him at that time?

A. Yes, sir.

Q. Captain Leonard was captain of what boat?

A. The West Jersey, now, at the present time, captain of the Baltic.

Cross-examined by Mr. SELZBERGER:

Q. What is your official business; did you learn a trade?

A. Yes, sir.

Q. What was it?

A. Ship carpenter; I served my time at it.

Q. You are not a seaman, also?

A. I followed the sea, sir.

Q. How long?

A. While I was in the ship-yard, when we built a vessel, I would go to sea on her; I went as a master for some time.

128 Do you remember anything about the trip of the Arctic upon which Mrs. Burton was hurt?

A. I do not remember the trip.

Q. Do you remember—were you on board?

A. I don't think I was; I did not hear about it until the afternoon, some time afterwards; I do not think I was on board of the Arctic at all.

Q. You don't think you were on board?

A. No, sir; not at that time.

Q. You saw ice in the river that day?

A. Yes, sir,

Q. So much so that some of the boats had to land their passengers by means of the gang plank, without going into the slip at all?

A. Yes, sir.

Q. Which boat was that?

A. It was the Delaware.

Q. Did that happen the same day?

A. Yes, sir; the same day in the morning; I could not say what time it happened; it was before the accident occurred or before I heard the report of it.

Q. You think it was before the accident occurred?

A. Yes, sir; I think it was.

Q. That same morning?

A. Yes, sir; I think it was.

129 Q. Who had charge of the business management of that boat?

A. Which boat?

Q. Did you go over on the Arctic on that trip?

A. No, sir.

Q. Who took the money on that trip?

A. We do that on shore on both sides.

Q. Who took charge of the boat?

A. Captain Hillman.

Q. Where does the captain keep himself?

A. In the pilot-house.

Q. Suppose there had been a fight on board that boat in the cabin, does he have charge of that?

A. He has charge of the boat.

Q. Does he have anybody else to assist him?

A. Oh, yes, sir; he has the deck hands.

Q. Who are your deck hands and what do they do—are they persons who work about or do they have authority?

A. They have no authority except from the captain.

Q. I do not mean from the captain, but is there not a man, a person, to talk to the passengers?

A. The deck hands do that.

Q. How many deck hands were there on this boat?

A. There were two.

130 Q. There were two on the Arctic?

A. Yes, sir.

Q. What is the special duty of the deck hands?

A. To fasten the boat to the wharf with a hook, to keep the boat clean, to stow the wagons and so forth, and to answer any questions that may be asked by the passengers.

Q. It is not their duty to act as captain, or anything like that?

A. Not particularly.

Q. They sweep up the place, keep it clean, stow the wagons, and so forth?

A. Yes, sir; and trim the lamps.

Q. There is nobody who has any executive management on board except the captain?

A. No, sir.

Q. And he stays up aloft?

A. Yes, sir.

Q. Where was the captain when the passengers got on board this boat that morning?

A. I suppose he was on board of the boat attending to his rudder and keeping that thawed out from the ice. In the winter time the water coming up there, and the ice grinding up, chokes up the rudder so it has to be thawed out.

131 Q. There was plenty for him to do I suppose, and he paid no attention whatever to the condition of the passengers?

A. No, sir; he never had anything to do with them.

Q. That is not his business?

A. No, sir; his business is to guide the boat and take her across the river.

Q. Were not his deck hands helping him about that rudder?

A. He always has two men to assist him.

Q. Do you know of any person specially there upon that morning on the Arctic whose duty it was to look out for these passengers?

A. We never have anybody at any time, nobody but the deck hands, to look out for them; if anything occurs, of course, the deck hands look out for them.

Q. Just the same as any other person would have authority if anything happened, one who was not specially deputed to do so?

A. No, sir.

Q. About the special force used in getting the boat into the slip on this trip you know nothing?

132 A. I know it took all the force she had to get in on that day all day.

Q. You know nothing about the particular occurrence?

A. I know nothing about that particular occurrence.

Q. You know nothing about the injuries to Mrs. Burton?

A. No, sir.

By the COURT:

I want to know whether or not the boats crossing the river, whether they undertake to furnish seats for all the passengers, or whether the seats are sufficient for a portion of them?

A. Only sufficient for a portion of them; we have seats around the sides of the cabin.

Q. Is it or is it not the habit for a large portion of the passengers to stand?

A. Yes, sir; that is an every-day occurrence.

Q. I mean whether there is any crowd or not; whether there is not a large proportion of the passengers who have to stand?

A. They have to stand.

Q. Outside of the cabin as well as in?

A. Outside as well as in.

By Mr. SELZBERGER:

Q. How many trips did you make?

A. The boat makes a round trip every half hour, only when there is ice in the river, when they have no difficulty.

133 Q. Then on ordinary trips there is no difficulty in seating everybody who comes on board?

A. Except nights and mornings, then we cannot seat all the passengers. In the morning, from six to eight o'clock, when the people come from their homes to go to business and go to work, there will be more people then we can seat. That is the time we carry the bulk of our people.

Q. How is it during the other hours?

A. During the other part of the day there are always plenty of seats.

By Mr. DIXON:

Q. How long does it take to cross?

A. Our average time is five minutes.

By Mr. SULZBERGER:

Q. Was this the first trip of the Arctic that morning?

A. No, sir.

Q. How many trips did she make?

A. I could not tell you; she made her regular time.

At this point the court adjourned until to-morrow morning, at ten o'clock.

134 *Second Day.*

In the U. S. District Court, Eastern Circuit of Pennsylvania.

MARY K. BURTON *vs.* THE WEST JERSEY FERRY CO.

Before BUTLER, J.

TUESDAY, *April* 4, 1882.

Defendant's testimony resumed.

Capt. EDWARD HILLMAN, called by Mr. DIXON, sworn and examined.

By Mr. DALE:

Q. What is your business?

A. I am a captain and pilot of the ferry-boat Arctic.

Q. How long have you been employed as a pilot on the Delaware river?

A. About 22 years.

Q. In the service of that company?

A. The West Jersey Ferry Company.

Q. Prior to that time did you have any experience on the Delaware river?

A. I did; I was a deck hand on the boats of the ferry two years, and I followed the water for about five years.

Q. Have you a license from the United States Government as a pilot in the waters of the Delaware river?

A. I have.

Q. Have you that license with you?

A. I have.

Mr. DALE, to the WITNESS: Please produce it.

135 The witness produces the license, and it is then handed to Mr. Dale, and by Mr. Dale it is handed back to the witness.

The COURT, to the WITNESS: That is your license?

The WITNESS: Yes, sir.

By Mr. DALE: Do you remember the 31st of January, 1881?

A. I do, sir.

Q. What kind of a day was it?

A. It was a very hard day on the 31st of January, 1881.

Q. What kind of weather had you been having during the preceding months of December and January?

A. We had very cold weather.

Q. What effect had that cold weather produced on the river?

A. It had the effect of filling the river full of heavy ice.

The COURT, to Mr. DALE: May I suggest this to you? That [it] is very important to confine ourselves to the matters really involved, and the plaintiff does not allege that there was any trouble in crossing the river, or difficulty or carelessness there; it was only in coming into the slip; that was where the difficulty was, and
136 it is what was necessary to do, that and nothing more.

Mr. DALE, to the COURT: It was only to show the general condition of the river.

The COURT, to Mr. DALE: That has been thoroughly shown.

Mr. DALE, to the COURT: I will not delay over this point.

The COURT, to Mr. DALE: There is not a bit of use in going further with this point; not a bit.

Mr. DALE: Very well. (To the witness:) What was the condition of the slip on the Philadelphia side on that day?

A. The slip on the Philadelphia side was packed full of ice.

The COURT, to Mr. DALE: He may describe that as fully as he will.

Mr. DALE, to the WITNESS: Please describe fully the condition of that slip, the thickness of the ice, and how it was packed in the slip.

The WITNESS: The condition of the slip was this: The ice was

packed into it where the boats had to go; this had been done during the day before—on Sunday. The ice laid in that slip very tightly packed together. The ice was so packed in these slips,
137 and had been there for two or three days at a time. This was on account of ice in the river being so heavy and no way of working it out. In getting into the dock we had to work our way in sometimes; we could go in with a headway. At times, if you would go in with a headway, you would tear things to pieces, and at other times, if you would go in with a headway, you would not go more than ten feet into the slip; then we would have to back back again and come in again. On some trips the boat had to back off four or five times in order to get the boat into the slip.

Q. How thick was the ice on that day in that slip?

A. From six to seven feet deep.

Q. Was the condition of the ice on the Pennsylvania shore such that other ferry-boats could get in?

A. No, sir; it was not.

Q. What ferry-boats were plying across the Delaware at all that day and making a landing?

A. The Columbia and Arctic run to Market street. They made their landings; but the Pennsylvania boats, one of them, made three trips, and made her landings; and that is the only boat
138 that they had from their ferry during that day that made a landing from the other side.

Q. The Pennsylvania boats only could make three landings?

A. Three trips during the day. I came on duty at five o'clock, and, until I went off duty at six o'clock in the evening, they had only made three trips.

Q. What boat was that?

A. The Pennsylvania.

Q. What experience did the boat Delaware have?

Objected to; ruled out.

Q. Do you recollect the trip of the Arctic on the morning of the 31st of January, leaving Camden between nine and ten o'clock that morning?

A. I do.

Q. In what condition did you find the slip at Market-street wharf when you came across the ferry?

A. I found it full of ice. In coming to the slip—in coming across I had to stop several times and to back off. When we came over to the slip, the ice being in front, packed in there, and one cake on top of the other up-ended, piled up, the same as you would pile
139 up the chairs. We came across, and in order to get in to that dock we had to come up in a circle, and in doing so our boat, the ice being so heavy, would not swing as much as we wanted it to, and we could not come in as close as was necessary to make the landing.

Mr. DIXON to the WITNESS: You say that you had to come in on a circle on account of the ice. You could not do that?

A. We could not swing the boat.

By Mr. DALE: Why was it that you had to come on a circle?

A. In order to get up—crossing the head of the island we were below our docks, and we have got to come over in a circle and come around in order to get up even with Market street, so as to make our landing in our dock.

Q. Perhaps some of the gentlemen of the jury are familiar with the condition of the river there; but will you please state—is there anything opposite or just below Market street?

A. Opposite market street there is an island or bar. It is about at Chestnut street; and above that, close to that island, we have a channel-way through which we can go. We go through it
140 and go above that channel-way. I suppose that channel-way is only about a couple of hundred yards wide. Above that channel-way there is a sand-bar that lies exposed in low water, and we dare not cross except on top of the tide.

Q. How far does that sand-bar run up?

A. Up to Vine street.

Q. So your method is to cross through the narrow channel, 200 yards wide?

A. Yes, sir; otherwise we can go down below and go through the canal, as we call it, but the other way is the nearest route, and the easiest route to get through.

Q. You came through the channel way?

A. We came through that channel way all that day while I was on the boat.

Q. Coming through the channel way you said you were unable to make the proper circle, owing to the ice, and you were unable to approach the slip; now state fully what occurred when you came up to the slip, and state briefly the condition of the ice, and what you saw; you stated that the ice was heavily packed; now in what other respects was there anything noticeable in the condition of the ice?

141 A. As we came up we could not swing our boats to get around and come straight into the dock, which we had to do or jam our boat; we backed back and went ahead again; she did not come then as far as we wanted it to do, and we could only use one rudder, and we had to chain that, and then we backed back; we backed off again.

By Mr. DIXON:

Q. When you backed you had to chain the rudder in the stern?

A. Yes, sir.

Q. Then when you went forward again what happened?

A. We had to stop the second time.

Q. For what reason?

A. The reason was on account of the ice being so heavy in front of the slip that our boat would not come into it; we backed off the second time.

Q. Then what did you do?

A. We backed off about half the length of the boat; we stopped

and came ahead again, and put the rudder on, blowed the whistle, and pulled the bell, and pulled up the pin, which was down, and put the rudder on, and swung straight right at the mouth
142 of the slip when we came into the dock, and in that shape our way; we got passed the ice, working her and getting the boat in, and thus working the smooth pieces of ice, ten or twelve inches thick, right in the mouth of the slip; the slip was packed full with this hard jumbled ice where the wheels had drawn it into the dock.

By Mr. DALE:

Q. You say that on the top of this hard jumbled ice there was a big cake of ice about twelve inches thick?

A. Yes, sir.

Q. Approaching that, what did you do?

A. The boat came up under one lone *bow*.

By the COURT:

Q. What does that mean?

A. That means half speed that we are allowed to run on in general.

Q. Half speed; half the speed with which you are allowed to run in the river?

A. Yes, sir; working with free ice, one bell is to start; we have another bell called a jingle bell; that is used to hook on with and to run at our regular speed; what I mean by one bell is, that I had backed off and rang two bells to stop backing off, and then rang one bell to reverse the engine.

143 Q. What is the speed of one bell?

A. I do not know as I could state exactly the speed.

Q. Do not you know what the speed of one bell signifies?

A. One bell is to direct the engineer to work ahead at slow speed, half speed.

Q. What kind of speed is that? You may know, but the jury will not probably know.

A. I cannot say; I do not know.

By Mr. DICKSON:

Q. It took you some time to get your boat up to clear wate-?

A. Yes, sir.

Q. You had only backed back a half length?

A. Yes, sir.

Q. So then when you met that obstruction you had only gone back half a length, and of course could not have obtained your full speed in that time?

A. We did not come in with full speed; that is, at ordinary speed.

By the COURT:

Q. Not at the speed at which you ordinarily entered the dock?

A. No, sir.

144 Q. Then the ice did not require any additional force?

A. Sometimes it does.

Q. Upon this occasion was the ice in the slip in such a condition that there was any more than the ordinary speed or force required to get in?

A. No, sir.

Q. You did not use any more?

A. We did not use any more speed or force than we generally do in those cases.

By Mr. DALE:

Q. One bell signal is a signal simply to start?

A. Yes, sir.

Q. Is there any slower signal?

A. No, sir.

Q. When you want the boat on full speed, you give what signal?

A. We have a small bell, called the jingle bell, that we pull once.

Q. Now, having given that signal by one bell, state to the jury what occurred then.

A. The boat only had half a length to come from where she had backed back to, and she came up into this piece of ice; I suppose it was from eight to ten feet wide, probably longer, and come
145 so slow that she did not split that piece of ice in two, but pushed it in or over the other ice.

Q. Then you think that that cake of ice went up over the other jumbled ice?

A. It went up over the ice. It did not break. It went into the dock. It was pushed by the boat into the dock ahead of the boat until the boat came close up to the bridge, then this piece of ice, striking the bridge, split; but it did not split straight ahead of the boat it went quartering, and by that going quartering that way it brought the boat on that side of the dock, at the same time it brought her the other way up to the bridge.

Q. Let us now understand that; you say that it did not split straight, but split towards the quarter and the boat followed the of the track split?

A. Yes, sir.

Q. Which threw it where?

A. It threw it on the starboard side; the left-hand side of the dock.

Q. That is on the south side of the boat?

A. Yes, sir.

Q. What did she strike there?

A. She struck the side of the boat—the side of the boat struck the piling, and then the boat surged the other way.

146 Q. Captain Hutchinson explained yesterday that this piling is not of a solid nature, but is movable?

A. It is movable providing there is no ice packed around it.

Q. What is the effect of the ice on the piling?

A. I will explain it. With this row of piling and behind it there is a solid wall, that is the condition in which it was at that time; the ice was packed behind the piling and that made the piling solid,

and when the boat swung in in this way the shock was more severe —that is the piling did not tend to break the shock.

The COURT: (To the witness.) The effect of the ice behind the piling was to make it stationary; it was made stationary by the ice?

A. Yes, sir; the piling or the ice lie between here—between the piling and the solid wall—was to make it all solid: there was no give to it. The boat in coming in at this time of the year and striking against this piling you would not feel the concussion; it would not make a sudden jar on the boat.

By Mr. DALE:

Q. This piling was intended to ease the boat?

147 A. Yes, sir; and prevent a greater jar.

Q. This piling was to prevent a greater jar than it would have otherwise?

A. Yes, sir; the piling in ordinary times would relieve the jar; it would give over 18 inches to two feet; there is that much spring on it; that eases the jar and the spring of the boat; it eases the spring which the boat might give to it, and the boat comes in very easy; but in this case, when the ice is behind it, it cannot yield, and the jar has got to come suddenly.

Q. Now, captain, it was stated yesterday in evidence that after you had made two or three attempts to get in to the dock, that you backed out and put on an extraordinary pressure, and came right up against the bridge, without touching the sides at all, at full speed. Now did you come directly up against the bridge?

A. I did not, sir, as I told you; I give you the size of that dock; we struck the side of the dock first, then we went on to this piling; this piling stands seven feet from the end of the bridge; the boat springs back from the bow; the bow is made rounding, and

148 a strip right on the side which glances right square on the bridge or dock; when the boat is up against the bridge, there is not one inch of play between this planking and the boat; that was in order to make the boat straight with the bridge.

Q. Did you strike or did you not strike the bridge on that day with extraordinary force?

A. No, sir; we did not strike the bridge that day any harder than we had before or did afterwards; it was only what I allowed it to, as the two jam-s closed together; it was something I considered unavoidable.

By the COURT:

Q. Was that jar any greater than the jar would be from touching the side as the boat ordinarily does, going against the piling when the piling is made stationary by the ice packed up as you say?

A. Yes, sir; the ice was packed in behind, and that would make t-e jar double.

Q. I understand that; but were you thrown against the side of

the slip with any greater force by reason of the splitting of this cake than the ordinary striking of the slip in coming in?

A. No, sir.

149 Q. It was no greater?

A. No, sir.

Q. Then the extraordinary jar resulted entirely from the condition of the piling being made stationary by the ice packed behind it?

A. Yes, sir.

Q. That is the whole cause of the extraordinary jar?

A. Yes, sir.

Q. Was it known to you before that that was the condition of the side of the slip?

A. Yes, sir.

Q. How long had it been in that condition?

A. It had been in that condition for weeks—two or three weeks.

Q. That you knew?

A. Yes, sir.

Q. Was that unavoidable?

A. That was unavoidable, the ice being in there, sir.

Q. It could not be removed?

A. It could not be removed.

By Mr. DALE:

Q. Suppose it had been taken out, what would have been its condition then?

A. It could not be taken out; it would have packed in again immediately, and there is no power which would prevent its

150 getting solid, as solid as it had been before; it would freeze afterwards; the boat coming into the slip keeps the slip open; when the boat enters in the slip it drives the ice under the wharf, and it drives it under this planking; the planking is clear down to the low-water mark; the ice would come in there and come back and freeze solid.

Q. When that slip is filled with jumbled ice, presenting the appearance that the ice did upon that day, is it possible for any pilot, in looking at it, to tell exactly how much resistance it will present to the boat?

A. No, sir; I do not think that there is any man who ever steered a ferry-boat, or any other man, can tell exactly how much force it is going to take to get into that dock when it is in that condition.

Q. From your experience as a captain have you found that at times when apparently great resistance should be offered to the boat in coming in that in fact it turns out the boat comes in easily, and that sometimes when there is a less indication of resistance the boat will require greater force, and you are entirely blocked?

Objected to, as leading.

151 Q. Is there anything that occurred that morning which fixes this particular trip in your mind?

A. Yes, sir; there is.
Q. Now state what it was.
A. On that trip this lady was hurt.

By the COURT:

Q. You knew of that at the time, did you?
A. After it had happened, I knew it the same trip, but not until after the passengers were on shore. What made me remember that trip was that I went down to look at the rudder. The ice will collect on the rudder, and it will throw up on the rudder-stock and freeze. In order to get that out of there we have a watering-pot with hot water, which we pour down to thaw the ice off, so that we can use the rudders freely. After we landed the passengers, I went out of the pilot-house and companion-way on to the main deck, where we have the watering-pot standing; we have a steam pipe there. I tooke the watering-pot and held it to turn the steam on, and boiler it there. Then I took the pot down to the rudder-stock and poured the water down on to the rudder-stock, in order to thaw the
152 ice and to leave the rudder free, so that we should be able to handle the rudder, and while I was there pouring that water down I heard some one say, "I guess that lady was hurt." I says, "What lady?"

The COURT, to the WITNESS: That is not material. You need not go on with that.
Mr. DALE, to the WITNESS: Your attention was called to the fact that a lady had been hurt?
The WITNESS: Yes, sir.

Q. This was before you left the slip going back?
A. Yes, sir; before I had left the slip on the return trip.
Q. So you recollect this particular trip on which the accident occured from that?
A. Yes, sir.
Q. How many trips do you make in a day?
A. When there is no ice in the river, we run from five o'clock in the morning to six o'clock at night, and make twenty-six trips.
Q. Twenty-six round trips?
A. Yes, sir.
Q. There is a slip on the other side of the river also, is there not?
A. Yes, sir; two of them.
153 Q. So that for twenty-two years fifty-two times a day you have been practicing entering that slip, and you have endeavored to bring the jar down to a- small a point as possible?

Objected to.

The COURT, to Mr. DALE: That is not material. He has had that much experience, and that is all there is of it.
Mr. DALE, to the WITNESS: Do you remember the condition of the tide on that morning?
The WITNESS, to Mr. DALE: Yes, sir; it was ebb tide; the tide was running down.

Q. You say it was running down; but in reference to the tide's velocity, how was it?

A. That I could not tell.

Q. You do not recollect?

A. I could not tell the strength the tide was running down; there was very little water that I could see; we only knew by the ice flowing that there was the tide running down.

Q. Is there anything in the situation of the dock at Market street wharf that makes the entrance into it a difficult thing—I mean in reference to bringing the boat in without some shock?

154 Objected to.

Q. If there is anything of that kind, state all the circumstances.

A. Yes, sir; there is a difficulty in the tide, sometimes, you know; the tide will run strongly down across the mouth of the slip, and the very next time you come in the tide will be whirling the other way within about fifty feet of the end of the dock, so that coming in there you have got to go and run your boat ahead against the tide and come in on a circle in that way in order to bring the boat on a sweep of the ice. In entering that tide the tide may be running one way on one end of the boat, and on the other end sweeping the other way, and you have got to swing your boat on a circle in order to make an entrance into the dock straight with your rudder.

Q. In what part of the Delaware river does the tide run strongest?

A. It comes in along the wharves of the Pennsylvania side.

Q. Where is the deepest part of the river?

A. Along the wharves of this side, on the Pennsylvania shore.

155 Q. What effect does the blocking of the river with ice have upon your control over the boat with reference to the wheels and rudder? Describe particularly how it affects your power to control the boat with the same certainty you would do if was not there.

A. It crowds the ice together; there is no room some part of the time for the ice to pass outside, and the boat has to go over it oftentimes, and it has an effect upon the *the* other side of the boat, and oftentimes strikes the rudder, and it will knock the wheel out of your hand, maybe; but if the boat is swinging in that circle you cannot stop it; you have to haul the rudder right around and reverse, and by doing that, that being the extreme end of the boat, you can avoid it. Oftentimes a cake of ice will come up there and catch it and throw it the other way.

By Mr. DALE:

Q. Was any one with you in the pilot-house that day?

A. Yes, sir; Captain Thomas S. Leonard was in the house that day.

Q. He is in court now?

A. He is.

156 Cross-examined by Mr. SULZBERGER:

Q. How late did you get on duty that morning?

A. At five o'clock.

Q. How many trips had you made before this trip?

A. I think I have made four or five trips.

Q. Do you know whether anybody was injured on the other trips, or whether anybody fell down on the other trips?

A. No, sir; I do not.

Q. You did not know that anybody had fallen down on this trip until everybody had got off?

A. No, sir.

Q. There was no one to report to you?

A. No, sir; not until I went down.

Q. Then you heard accidentally the conversation?

A. I heard the conversation.

Q. It was not reported to you?

A. The other man had gone to the other end of the boat to take it ashore.

Q. You just heard the people talk?

A. Yes, sir; that is all.

Q. Now, the condition of the river on that day was substantially like what it had been all the week?

157 A. No, sir; there was ice on Sunday. It had accumulated, and on Monday it was made harder on account of the tide being a little higher on Saturday night; it brought the ice up the river from the Horse-shoe.

Q. The tide, you say, made an increase of ice on Monday morning?

A. Yes, sir.

Q. The ice was floating down?

A. No, sir; the ice was there, and jammed. It could not float down, for it was blocked across down at South street, and above the Pennsylvania channel was blocked, and it could not go up the river any further. It was blocked at Port Richmond.

Q. There was no clear space in the Delaware river down to South street?

A. No, sir; it was blocked at South street wharf. The Kaigns Point boat had tried to run there, and they could not get in at South street all that day.

Q. You went through the canal at Smith's Island?

A. No, sir; I went on the upper end of Smith's Island, through the channel there.

Q. How wide is that channel?

A. 200 yards; but there is not 100 yards when it is low water.

158 Q. Was that channel blocked with ice?

A. It was full.

Q. You went through without difficulty?

A. No, sir; we had to back—to go as far as we could, and then we had to back off and take another run at it.

Q. I understand you did not put on any extra power to get through that channel?

A. I did not say that; we did put on extra power.

Q. In entering the dock you did not put extra power, but in going through this channel above the island you think you did?

A. Yes, sir; we put on extra power in the channel.

Q. When you came around the slip you found it was difficult to get in; you could not, I suppose, have landed your passengers by using the gang-plank without getting into the slip at all?

A. We could have landed them at the end of one of the piers.

Q. Then you could have avoided going into the slip?

A. No, sir; we had wagons on board.

159 Q. I say only for the wagons, the human beings could have been landed without running into the slip; but the wagons, of course, for them you had to go into the slip or leave them on board the boat?

A. Yes, sir.

Q. You pay no attention to the management of the deck business, the reception of the passengers, or anything like that; that is not your business?

A. No, sir; that is not my business.

Q. Captain Leonard was with you?

A. Yes, sir.

Q. He was out of a job that day, and his boat was not running?

A. His boat was not running.

Q. That is the reason he was with you?

A. He was with me on account of my assistants being away to a funeral.

Q. He supplied the place of one hand short?

A. He came on Sunday and was with me on Monday and Tuesday.

Q. That was because your assistant was away.

A. Yes, sir.

Q. The speed of the boat in general—do you know that?

A. The speed of the boat in general, in fair weather, she will make, I suppose, ten miles an hour.

160 Q. Do you know the speed of the boat that day, for instance, when you took one of these starts while in the channel and put on extra steam?

A. I do not suppose that she, with all her force we could put on her, could make half a mile in an hour, not to go down the river.

Q. And the force that was put on by virtue of which this boat could go half a mile an hour through that ice was the force with which — run in clear water ten miles an hour; is that what you mean to say?

A. Yes, sir.

By the COURT:

Q. I understood he run with one bell, but she would run with the jingle bell ten miles an hour?

A. No, sir; I did not say one bell; I said ordinary running.

Q. Then I understand you to say that the power you can run with in clear water, making ten miles an hour used in that chan-

nel, did not make her run half a mile an hour, according to the best of your judgment?

A. No, sir; not more than that.

Q. You do not remember that in going into the slip on that morning of backing twice?

161 A. Yes, sir.

Q. You had trouble with that slip for several weeks, had you not?

A. Yes, sir; it continued all the winter.

Q. This business of backing and running forward had occurred to you how many times that winter—a hundred times?

A. A great deal more than that.

Q. More than a hundred times?

A. Yes, sir.

Q. Now in the course of this backing and flying, if you might call it, did it happen sometimes that you striking the sides—one side or the other of the slip, and that sometimes you did not, and at those times that you would run right clear in?

A. It was not often that we could go right into the slip.

Q. Sometimes you did?

A. Once in a while.

Q. How can you tell at this interval of time which trip it was that you struck the slip straight, and which trip it was that you struck the side?

A. I do not know that I can answer that question.

Q. But you have said here that upon this occasion you
162 struck the sides—the port side, and that you now remember this; how do you remember it was that side on that trip? Might it not be the trip before or the trip after?

A. The way I know it was on this trip was because that this lady was hurt, and I remember the boat striking on that side.

Q. That is the only way you know it?

A. That is the only way I remember that fact.

Q. How do you know that when you heard this talk it was really on this trip that the lady was hurt? Might not the people have been talking of a lady being hurt on a previous or a subsequent trip?

A. There was a person who said that it was on that trip when the boat came in.

Q. They said that it was on your boat that trip?

A. Yes, sir.

Q. You do not know who the person was?

A. I think Captain Leonard was one that I heard speak about it; some one had told him and he spoke to me about it.

Q. You are sure it was Capatin Leonard?

A. Yes, sir.

Q. He told you about it?

163 A. Yes, sir.

Q. You did not know who told him?

A. No, sir.

Q. When did he tell you; when you were down there fooling with the watering-pot?

A. Yes, sir; when I was putting the water on the rudder.

Q. When Captain Leonard told you you had not heard before, and you never heard afterwards from anybody else?

A. Yes, sir; I heard of it afterwards.

Q. From whom did you hear of it?

A. I heard it from the gentleman who was on the stand here yesterday. I heard that he had told one of our slip-tenders that a lady was hurt.

Q. He never told you?

A. No, sir; he never mentioned a word to me about.

Q. Do you know how many people you carry on a trip?

A. I could not tell you how many people we carry.

Q. Do you know how many seats there are in the boat?

A. In the ladies' cabin there are 77 seats inside of the cabin, and the same number in the gentleman's cabin; on the outside
164 of the cabin, on the end, there are 7 seats on each side on each end.

Q. That makes 182 seats on the boat?

A. Yes, sir.

By the COURT:

Q. How many passengers do you suppose you had that trip?

A. Indeed, I could not give you any idea as to how many were on the boat; I was not down on deck.

Q. Was it not customary to carry more passengers than the boat will seat?

A. Yes, sir; all the boats on the river do that. I do not think there is any ferry-boat that crosses the river that has seats to accommodate all the persons who cross at certain times.

Q. It is not customary with a large proportion of the passengers for them to stand whether there are seats or not?

A. I have seen over 150 passengers on board the boat, and I dare say over half of them were on the front, on the bow.

By Mr. SULZBERGER:

Q. That was on some fine summer day?

A. I have seen them out in the winter time.

Q. You do not mean to say that you have seen them out
165 there on the bow of the boat, on the windward side of the boat?

A. I did not say the windward side of the boat.

Q. Yet you have seen them standing there?

A. I have seen them on the bow of the boat, standing there.

Q. That is not a regular rule is it?

A. It is not a regular rule.

Q. The fact is that you don't know anything about what the passengers do, do you?

A. If they come out I can see them.

Q. You have been 22 years on the boat observing the passengers how many could you see?

A. Those who came out on the end of the boat.

Q. You could merely see the people who were on the end of the boat, but you had no personal means of knowing whether the seats were full or not?

A. No, sir.

Q. How many people were on board of the boat on the last trip?

A. I could not say; I suppose there were enough to fill the seats. I judge of that by seeing them go ashore off the boat.

Q. Did you observe them coming off the one boat this trip?

166 A. No, sir; I did not. The reason why is, that when I landed my boat I turned to get this watering pot to pour the water on the rudder before we started back.

Q. Then you did not even look to see whether your boat was crowded or not?

A. I did not.

Q. You did not see that?

A. I did not see that.

Re-examined by Mr. DIXON:

Q. The question has been asked whether you could have landed your passengers at the end of the pier by means of a gang plank. In the first place was there any arrangement made for receiving passengers at the end of the pier?

A. No, sir.

Q. In the second place, suppose that you had landed the passengers at the end of the pier, with the tide going up and down, by means of the gang plank, would there not be a liability or a chance of the gang plank being moved?

A. If the ice had been driving ahead, we could not have

167 stayed at the end of the pier, or landed our passengers there in safety.

Q. Was there greater probability of coming without accident into the dock than by stopping and landing the passengers at the end of the pier, which would be the greater chance?

A. I think the chances of stopping at the end of the pier would have been a great deal more dangerous than in coming into the slip.

Q. You have been asked about the speed of the boat going 10 miles an hour in smooth water, supposing that you were standing still and this boat was put on half speed at the first ring of the bell, and you then rang the jingle bell, how long would it take to get up your speed; how many lengths of the boat?

A. It would take the boat to get into full rate of speed, I suppose, about two lengths of her.

Q. Two lengths of the boat?

A. Yes, sir.

Q. With half that power you only went half the length?

A. That is all.

168 Captain THOMAS S. LEONARD, called and sworn.

Examined by Mr. DALE:

Q. What is your business, Captain?
A. Pilot.
Q. In the service of what company?
A. The West Jersey Ferry Company.
Q. Do you remember the 31st day of Jan., 1881.
A. Yes, sir.
Q. What boat were you on on that day?
A. I was on the Arctic?
Q. Is that your usual boat?
A. No, sir.
Q. Why were you on the Arctic?
A. My boat was not able to compete with the ice that winter and they laid her up.
Q. Who was in the pilot-house with you?
A. Mr. Hillman.
Q. The gentleman who was just on the stand?
A. Yes, sir.
Q. Do you remember the trip of the Arctic from Camden to Philadelphia between nine and ten o'clock that morning?
A. Yes, sir.
Q. Did you have difficuly in crossing?
A. Yes, sir; we had difficulty in crossing all day; all day we were bothered in crossing, more or less.

169 Q. Do you remember particularly the coming into the slip on the Philadelphia side?

A. Yes, sir.
Q. Now, please state to the court and jury the circumstances connected with the going into the slip.
A. It was just as Mr. Hillman stated; we had to go round in a circle to enter our dock. Our boat was a little to- high up in the water, which caused us to back back, and the ice being so heavy ahead of her, between our boat and the dock, that our boat could not get away for the boat to go into the dock.
Q. How many times did you have to back before getting into the dock?
A. We had to back twice.
Q. What was it that prevented you from going in the second time?
A. The boat having such a slow headway caused it to shove the ice ahead of it; she was going up on to the ice and shoving it ahead; she was going up so slow that the ice did not part.
Q. After making one or two ineffectual attempts, what did Captain Hillman do?
A. He backed back and attempted to go up into the dock by leaving the boat out into the stream in this way, and I suppose

170 he passed part of this heavy body of ice from under him, which caused it to go to the south side of the dock.

Q. What speed did the captain of the boat put on in going into the slip on that day?

A. He only had the boat on one bell; the speed we run all day would not amount to much, because the ice is so heavy.

Q. Did the boat go on fully to the end of the slip to the bridge, or did it go against the side?

A. No, sir; it struck against the side.

Q. What caused it to go against the side?

A. I suppose the ice being a little heavier on the upper side and a little lighter on the lower side caused it to take a sheer in that way.

Q. What effect has the blocking of the ice in the slip upon the power of the pilot to direct the boat?

A. Sometimes you can go in all right; when the dock is full of ice you will have to back half a dozen times.

Q. Can or cannot the pilot guide the boat with accuracy when the dock is full of ice?

A. No, sir; you have got to use more judgment; you have got to go in carefully and slowly.

171 Q. But, using the best judgment, what is the effect; what effect would it have; would you always strike right, I mean, in using the best judgment?

A. No, sir; we cannot.

Q. Is there anything that fixes this particular trip on your recollection?

A. Not more than in coming down on deck I heard them tell of this lady getting hurt.

Q. You say when you come down on deck you heard tell of this?

A. Yes, sir.

Q. Do you remember who told you?

A. No, sir; I could not say who told that; it was some of the passengers.

Q. Were the circumstances of the hurting detailed to you fully; did you hear particularly who it was that was hurt?

A. No, sir; this gentleman told me, and said that she was scared more than she was hurt.

Q. How long have you been on the Delaware river?

A. 15 years. I have been with the West Jersey Company about 20 years.

Q. How severe was the blow with which the vessel struck the side of the wharf that day?

A. I have seen a great deal heavier blows since and a great deal heavier before; it was not a blow; it was a shock.

By the COURT:

172 Q. The captain has said it was, and all blows against the side of the ship in the condition in which it was would be more than twice as heavy as an ordinary blow that is struck in coming in; how was that; how do you remember that?

A. That is about the same as I remember—that just by coming

in this way (indicating) she struck quartering, and went off on the other side.

Q. The other side being solid the blow would be, you say, twice as heavy as if the head of the boat had been in its ordinary condition, or the slip in its ordinary condition?

A. Yes, sir; you would never have known anything of it if it had not been in the way it was at the present time.

Q. The stroke would have made some jar even then?

A. No, sir; because the piling gives from two to three feet with the weight of the boat surging on it, and would let this boat be eased up.

Q. Would it not make some jar notwithstanding?

A. Well, not a great deal.

By Mr. DALE:

Q. What was the condition of the piling that morning, if you have any recollection of it?

173 A. It was all frozen back there solid—the water was frozen behind it.

Q. Can you suggest any method by which the ice could be taken out and kept out of that piling?

A. No, sir.

Q. If it had been taken out in the morning, what would have been its condition by noon?

A. You could not have gotten it out; that is a thing impossible.

Q. From your experience on ferry-boats, Captain, what kind of a jar was most apt to disturb the footing of the passengers who are standing on the boat—a blow straight against the bridge or a blow on the side with a rebound?

A. Well, that is a great deal on account of who you are standing by; sometimes standing up the least blow you get pushing against somebody may cause half a dozen people to go or to fall, and especially when the ice is in the river and there is a crowd on the bow of the boat, more so than at any other time. We have no control over the passengers; we might tell them to go away from the bow of the boat, it would do no good; the passengers on the boat think they steer better on deck than the pilot does in the pilot-house.

Q. You were in the pilot-house that day?

174 A. Yes, sir.

Q. From the pilot-house have you a full view of the passengers standing on the fore part of the boat?

A. I had.

Q. Please state whether or not fifty of those passengers standing there were thrown down by the boat going into the slip that time.

A. I did not see one.

Q. If fifty people had been thrown down you would have seen some of them?

A. If there had been one thrown down I should have seen it; I was watching the boat come in; I would have seen them.

Cross-examined by Mr. SULZBERGER:

Q. How long have you been pilot on board one of these boats?
A. 15 years.
Q. For 15 years you have been accustomed to being on deck?
A. Well, more or less.
Q. Not so as to observe the passengers?
A. No, sir; I have no control over them.
Q. In fact, you have no control of that part?
A. Sometimes, when they get out front on the bow of the boat I tell them to go back.
Q. Is it not your duty to go and supervise the management of the passengers?
175 A. Yes, sir; it is my duty, but then I might as well——
Q. It is a duty generally not performed?
A. Yes, sir; it is.
Q. You were with Captain Hillman on that day?
A. Yes, sir.
Q. You say, as I understand it, that he went into that slip the third time with about the same force and in the same manner as he attempted to go in the first two times?
A. Oh, no, sir; not as he did the first time.
Q. The two times?
A. When we first went up to the dock.
Q. When you first went up to the dock you say that you had a different rate of speed than you did the second time?
A. Of course we had a little more head the first time than we did the second, because you cannot get the headway the second time.
Q. You went in at a slower speed the second time?
A. We were getting slower all the time.
Q. The third time you were slower than the second?
A. Yes, sir.
Q. Will you now explain to me why with that extra headway the first time and with still slower headway the second time you were not able to go in the second time, but the third time you were able to get in?
176 By the WITNESS: I have explained that.
By the COURT (to the witness): Explain it again.

By the WITNESS: When we got into the dock our wheels are moving ahead and passing out the ice under the boat at the sides of the boat, passing the ice astern of us, which made free this heavy body of ice in the slip, and we don't require the same headway going in the second time as what we do going in the first time, because this body of ice will crowd right up on us.

By Mr. SULZBERGER:

Q. I understand you to say that if you went backward and forward a sufficient number of times that you could, by a process of suction, take the whole of the ice out of the slip?
A. Not the whole of it—some portion of it. You cannot with your wheel get the whole of it out.

Q. Now, will you tell me what principle operates to prevent their taking out the other portion that remains in?

A. You cannot get to it.

Q. Which part comes out when you begin to run your boat in; which part goes out first?

A. The parts nearest to the wheel.

177 Q. When that is removed and begins to float down stream on the tide then the boat can go in?

A. But it did not float down the stream.

Q. What become of it—did it come back?

A. It laid back in the deep water.

Q. Behind you?

A. Yes, sir.

Q. Did it interfere with you?

A. No boat could get in.

Q. But it did not interfere with you on that trip any more?

A. No, sir.

Q. If it had gone backward and forward a number of times more, could you not have got the ice out by that same process?

A. No, sir.

Q. Why not?

A. Because we had no water to throw it into. We had to have water to throw it out clear of the boat.

Q. How much ice was left in that slip?

A. Our boat is 158 feet long, and our wheels, I suppose, are amidships.

Q. Well, that is 79 feet of stuff in front of you.

A. As the wheels are you cannot get this ice by those wheels.

Q. Very well. I understand your opinion to be that the same process by which the ice was taken out did not apply to the

178 ice that remained in, and that you had to go in with the ice there. Now, what became of the ice when you went in?

A. It lay down in the dock in the deeper water.

Q. It was crowded down.

A. Some went under the boat, and some under the piling, and some under the wharf.

Q. Then there was not ice between the boat and the slip?

A. It was impossible to get the ice out entirely.

Q. Did the boat strike the ice and part it?

A. It could not get in the dock without it did.

Q. The ice was floating.

A. No, sir; the ice was stationery.

Q. You say the ice was stationery?

A. It was stationery from down below South street up to Port Richmond.

Q. No, no; I am speaking of the ice in the slip.

A. The ice was floating in our dock—part of it was aground and part was afloat. I suppose maybe the water was 50 feet deep.

Q. Was the water not 50 feet deep outside of the wharf?

179 A. Yes, sir.

Q. That is the deepest part of the river?

A. I don't know, sir; I guess there is a pretty good channel all the way along there.

Q. You don't agree with your colleage that that is the deepest part of the river?

A. I never sounded it, but I have heard that it is the deepest part on the Delaware river.

Q. They do say that that is the deepest part?

A. Yes, sir; that is what they say.

Q. How do you happen to remember that you struck the side instead of going right straight in. The captain says that he went in sometimes straight; how do you remember that this was not one of the times that you went in straight?

A. That is the time when I came down and heard of the lady being hurt.

Q. Who told you?

A. The passengers.

Q. What passengers?

A. I don't know who the passengers were.

Q. You did not inquire?

A. No, sir.

Q. You did not inquire?

180 A. No, sir; I might see you to-morrow on board the boat and I would not recollect seeing you the next day.

Q. As an officer of that boat, had you any interest in knowing whether people had been hurt?

A. I went around to inquire about the lady being hurt, and I could not find out anything. I inquired around of a couple of gentlemen, but they say she was more scared than hurt.

Q. Did not somebody call your attention to it?

A. I suppose so.

Q. Did the other gentleman say anything to you; and if so, what?

A. He said an old lady had fallen down in the cabin?

Q. Neither you nor your colleague ever heard of the chandelier that was unshipped?

A. Yes, sir.

Q. You did hear of it?

A. Yes, sir; that is an every day occurrence that might be done in clear water; it might be done without any shock.

Q. You did not hear of the chandelier falling and hitting somebody in the head?

A. I heard of it yesterday.

181 Q. I don't mean yesterday, I mean on the day it happened?

A. No, sir; I did not.

Q. You never heard of it afterwards until yesterday in court?

A. I saw the chandelier when it was down.

By the COURT:

Q. The question is, whether you heard of it at the time?

A. No, sir.

By Mr. SULZBERGER:

Q. You never heard of other people who have been injured?

A. No, sir.

Q. You think if anybody had fallen down you would have seen them?

A. I would have seen them; I saw the passengers standing on the bow of the boat.

Q. If you were looking at the bow?

A. I was looking at the bow.

Q. How do you remember that?

A. I was looking—that is my custom.

Q. Is this merely a habit or a recollection of that day and that trip?

A. It is my business to know how far the bow of the boat is from the end of the slip.

Q. There might be some conversation when your attention was not attracted to—one instant?

182 A. An instant is only the twinkling of an eye.

Q. Some little time—perhaps your definition is correct—then say a small period of time.

A. Yes, sir.

Re-examined by Mr. DICKSON:

Q. I understand you to say that your boat is 150 feet long?

A. Yes, sir.

Q. The ice which the wheels drove backwards is the only ice that the wheel could get hold of?

A. Yes, sir.

Q. The wheels cannot reach the ice that is between them and the bow of the boat?

A. No, sir; the wheels cannot reach that ice between them and the bow.

ZIBEY TAYLOR, called and examined.

By Mr. DALE:

Q. What is your business?

A. I am deck hand on the Arctic.

Q. How long have you been a deck hand for the West Jersey Ferry Company?

A. Two years on October next.

Q. Do you remember the 31st of January, 1881?

A. Yes, sir.

183 Q. Were you on the Arctic on that day?

A. I was, sir.

Q. At which end of the boat?

A. I was at the aft end.

Q. Was the boat very full of passengers on that day?

A. Yes, sir; it was full, crowded all day.

Q. You had an experience on the water before?

A. I was on the water for a little over thirty years.

Q. What was the nature of your experience?

A. I have been master and mate of a vessel since 1855, until I went on the West Jersey ferry-boats.

Q. Do you remember the trip of the Arctic from Camden to Philadelphia that took place between nine and ten o'clock that day that has been spoken of?

A. I do, sir.

Q. Do you remember coming to the Philadelphia end of the line?

A. Yes, sir.

Q. Now state to the court and jury what happened.

A. Well, the only thing that called my attention to that
184 particular trip was I heard of this lady being hurt after I come to Philadelphia; I think I heard Mr. Plum, and he told me. I think it was about the time we were ready to go out when I heard it.

Q. You heard that a lady had been hurt?

A. Yes, sir.

Q. You were upon the aft end of the boat?

A. I was at the aft end of the boat.

Q. Were there any people standing on the aft end of the boat?

A. Yes, sir.

Q. A number?

A. Yes, sir; a great number of people; they were all over the boat.

Q. Were any of those people about you thrown down?

A. I did not see any of them thrown down.

Q. If any had been thrown down would you have seen them?

A. Yes, sir.

Q. Are you able to speak, of your own knowledge, of the speed at which the boat came in that day?

A. It was coming under one bell. It backed off twice, and it was coming in straight with the slip, working ahead under one
185 bell through the ice, and the ice was heavy. There was a big cake of ice in the slip, and she was working ahead under one bell.

Q. I want you to speak of the matters that you know of your own knowledge, what you saw; you could not see the bridge from where you were standing?

A. No, sir; I could not.

Q. Were you conscious of any shock?

A. Not anything particularly, we most always hit one side or the other. I dropped a pin and then looked out for myself, but I cannot tell whether she hit the slip fair or sideways; if she hits it sideways she will surge; if it hits the slip it will knock her back.

Q. Can you state whether she hit the bridge or the side?

A. She hit sideways and surged me to one side.

Q. It is then your duty as soon as the boat strikes to put the pin in?

A. As soon as the boat gets in the slip.

Q. What pin do you put in?

A. I put the aft pin in, which makes the stern of the boat—the rudder of the stern of the boat fast.

Q. You put the pin into the rudder?

186 A. I put the pin down into the rudder.

Q. When the boat goes out again that becomes the stern of the boat?

A. The stern of the boat.

Cross-examined:

Q. There was nothing particular about that trip to call your attention to the fact that you were thrown sideways, was there?

A. Well, sir; there was.

Q. What was there?

A. The boat hit the side of the slip, because I was thrown sideways.

Q. How did you notice that you have been thrown sideways fifteen thousand times?

A. I have been thrown both ways.

Q. That is not a thing that you would notice?

A. Oh, no.

Q. You would not always notice that?

A. That is not a thing I would always notice.

Q. How long would you carry it in your memory?

A. Sometimes we come in with a shock and sometimes we do not; sometimes we would not notice it all.

Q. How did it happen that you noticed that it threw you a little to one side or the other?

187 A. I noticed it.

Q. You are sure that you were thrown a little to one side?

A. Yes, sir.

Q. Now, that is not a thing to note in your memory at all, is it?

A. Well, that shock was a little heavier that time as she went in.

Q. Suppose it was a little heavier, you did not mind it?

A. No, sir; I did not mind it.

Q. It did not hurt you?

A. No, sir.

Q. Therefore, you did not make any note of it?

A. No, sir; I did not make a note of it, but when I heard of this lady being hurt, being knocked down, I supposed it was on account of the shock; I supposed the shock knocked her down.

Q. You did not hear of this lady being injured until afterwards?

A. Not until I went to the other end of the boat.

Q. With whom have you been talking about this accident?

A. With whom?

Q. With whom have you been talking about it; have you been talking with Captain Leonard?

A. No, sir; I have not been talking with any one.

188 Q. You have not been talking with Captain Leonard?

A. All hands of us were talking about it.

Q. Who told you about the cake of ice in front of the boat?

A. The pilot and Captain Hillman. I did not see it. I did not see the cake of ice, of course.

Q. You talked to Mr. Hillman and with Captain Leonard about it?

A. No, sir.

Q. With whom have you been talking?

A. I have not been talking with any one in particular.
Q. With whom have you been talking in general?
A. I don't know as I have been talking with any one.
Q. With the superintendent?
A. No, sir.
Q. Have you not been interviewed as to what you would be likely to say here?
A. No, sir.
Q. And not with any one?
A. No, sir.
Q. Except about that cake of ice?
A. They have never spoken to me about the ice at all.
Q. Did anybody say anything to you about it?
A. No, sir; and I said nothing to any one.
189 Q. Nobody said anything to you about it?
A. Only in regard to the cake of ice; I heard Mr. Hillman speak about the cake of ice he saw.
Q. He just spoke to you about the cake of ice, and that was all that was referred to; I mean about the lady that fell down?
A. Mr. Plum told me about a lady falling down.
Q. Nobody mentioned anything about the slip to you until you were subpœnaed; about the cake of ice, or anything of that sort?
A. I did not hear anything said until I heard the company was sued.
Q. You did hear the company was sued?
A. Only lately.
Q. Did you hear that the chandelier was unhung upon that occasion?
A. I know it was unhung.
Q. You did know?.
A. Yes; I put it back in its place; the captain and I attended to it.
Q. That was in the gentleman's cabin?
A. Yes, sir.
Q. You put it back?
A. I helped you put it back.
Q. You noticed that there had been some lurch there?
A. Yes, sir; I noticed that.
190 Q. You did not notice whether anybody was knocked down at the other end of the boat or not?
A. No; I could not see that.
Q. You did not hear of it afterwards?
A. I did not hear of it.
Q. You did not hear whether anybody was knocked down in the lady's cabin besides this lady?
A. I did not hear of any one but this lady.

Re-examined by Mr. DICKSON:

Q. How was the chandelier hung?
A. There is a staple goes right up in the column with the hook, and the jar unhooked it; it turned right up.

Q. The hook hooks into that staple?
A. The eye bolt in the brace hooks right in.
Q. How heavy is that chandelier?
A. It is not a very heavy one; it only holds one lamp.

By Mr. SULZBERGER:

Q. Do you remember whether there was any injury to the boat of any kind after that?

A. No, sir; not at all.

191 WILLIAM PLUM sworn and examined.

By Mr. DALE.

Q. What is your business?
A. Deck hand.
Q. What line?
A. West Jersey Ferry.
Q. How long have you been there?
A. Fourteen years.
Q. Upon what boat were you on the 31st day of Jan., 1881?
A. On the Arctic.
Q. Which end?
A. I was on the Philadelphia end.
Q. Do you remember the trip of the Arctic between Philadelphia and Camden on that morning?
A. Yes, sir; I remember.
Q. Do you remember the condition of the slip as you came in?
A. Yes, sir.
Q. State it.
A. The dock was chocked full of ice; we backed out; the slip was full of ice, and we struck the slip on one side and then on the other, and the dock at the same time.
Q. It struck against the side and then against the slip?
A. Yes, sir.

By Mr. SULZBERGER:

Q. You said at the same time?

192 By the WITNESS: Yes, sir.

By Mr. DALE:

Q. Were you in the position to see this cake of ice?
A. Yes, sir; I was right on the forward part of the boat.
Q. You were outside of the chains?
A. Outside of the gate.
Q. Was the ice heavy or not in the slip?
A. It was very heavy; we had to back off.
Q. Did you see any people on the fore part of the boat thrown down?
A. No, sir.
Q. Were there many people there?
A. We had a good many people on that trip.
Q. When did you hear of the accident?

A. I think I went out right away after we got unloaded.
Q. Do you remember who mentioned it to you?
A. I think it was Mr. Fox who told me.
Q. Did you see the lady?
A. No, sir; I did not see her. I did not know that there was any one hurt at all until he told me.
Q. Did you mention it to any of the other officials or hands on the boat?
A. I think I did; I told Mr. Taylor.

Cross-examined by Mr. SULZBERGER:

Q. That was not part of your duty to look after the passengers during the trip, I suppose?
193 A. No, sir.
Q. Did you have any particular duty to perform when you went in to the slip?
A. No, sir.
Q. You did get ready for something?
A. Yes, sir; I was right outside ready to take anything—I catch the hook when we come to the Philadelphia side.
Q. Were you right on the bow?
A. I was looking right out at the slip.
Q. You were looking right at the slip you say?
A. Yes, sir.
Q. In front of where the passengers were standing?
A. Yes, sir.
Q. Some one might have fallen down back of you and you not have seen them?
A. Yes, sir.
Q. I understand when a boat went into the slip it went against the side and the end of the slip right at once?
A. Yes, sir.

By the COURT: You say it bumped the side and then the end of the slip?
A. Yes, sir.

By Mr. SULZBERGER:

Q. I understood you to say at the same time, were those your words?
A. We struck the side and the slip at the same time.

194 WALTER T. FOX, sworn and examined.

By Mr. DALE:

Q. What is your busines?
A. Slip tender.
Q. For what company?
A. The West Jersey Ferry Company.
Q. On which side?
A. On the Philadelphia side.
Q. Do you remember the 31st day of Jan., 1881?

A. I don't know about the time, but I recollect the Sunday and the Monday before.

Q. Do you recollect the Monday when there was so much difficulty in crossing the river?

A. Yes, sir; I do.

Q. Do you remember the trip of the Arctic that morning between nine and ten o'clock?

A. I think it was somewhere in that neighborhood, the Arctic came over and there was considerable trouble before we could land. There were a great many passengers crossing and there was a great deal of excitement; the people were all along the wharves the whole day: the wharf was full from Federal street wharf up: was full of people.

By Mr. SULZBERGER:

Q. Never mind the photographic view of the Delaware.

195 By the WITNESS: The excitement was very great when the boat came in some three or four trips before that; two or three trips the Arctic had made when she came in the dock I went up and stood on the dock ready to throw out the chain. The boat made an attempt to come in and backed out again and then she tried to come in again and backed out and then she came in the third time. I think there was a large field of ice in front of her and she fetched right up. She pushed the ice right over the jumbled stuff and came on up. This piece of ice rode on top of the jumbled mashed up ice and the ice was packed in there, I don't know how deep. The boat came ahead slowly until it struck the slip, when the ice cracked and the boat was thrown off on the other side and then it slid over and came nearly up to the end of the slip, so that I could get on and put my hook on and then put the walking plank onto the boat.

Q. Do you mean to say that the ice lifted the boat up?

A. Well, yes, the ice did lift the boat up, part of the ice went under the boat when the boat came into the slip. When the boat

196 came in I got in the boat and gave her plenty of chain, if that is not done it will break the chain. The chain would be broken if I did not give her slack chain. The boat could not back up on account of this ice, that is what I mean to say by the boat going back.

Q. Was the boat very full of passengers that trip?

A. Well, I think the boat was pretty well crowded that day all day. That is from seven to nine when I left it.

Q. Did you see the passengers standing on the forepart of the boat?

A. Yes, sir; I was standing looking right at them.

Q. You were out on the bow?

A. Yes, sir.

Q. Did you see fifty people thrown down?

A. No, sir; I do not recollect seeing any one falling down.

Q. Did you ever see the boat come in with a crowd of passengers when fifty people did fall?

A. No, sir; I do not.

Q. If fifty people had fallen down, is that an occurrence that would have made an impression on your memory?

A. I think if fifty people had fallen down I think it would have impressed itself on my memory.

197 Q. You said you did not recollect; I wanted to see whether you would have been likely to have recollected it?

A. I think I would.

By Mr. DIXON:

Q. Your recollection is that you did not see any one fall that day?

A. No, sir; not on that trip.

Cross-examined by Mr. SULZBERGER:

Q. Your business was to wait until the boat came into the slip and then to make it fast?

A. Yes, sir.

Q. You did not notice any one falling, because all the time you were looking up and down the stream at the wharves?

A. Yes, sir.

Q. When you were looking up and down Front street and Water street?

A. I can't say that I was looking at the boat right straight ahead of me.

Q. If you were looking at the people on shore how could you see the end of the boat, and how did you know the people were excited?

A. I saw them before I went down to the boat.

Q. Then you are referring to another time?

A. I am referring to that morning when the boat came in.

Q. Oh, no, no; I am speaking of the time—this particular time, those particular five minutes of time.

198 A. That five minutes of time, I could not say as to that.

Q. You have already given us a description of what you saw that morning?

A. What I saw that morning; yes, sir.

Q. How do you remember that, when at that time you were attending to your bridge?

A. I was on the bridge, and then I could not see the wharf nor the street.

Q. What preparation did you have to make for the arrival of the boat?

A. I have to regulate the slip; the slip has to be raised up and lowered down.

Q. How do you regulate you- slip?

A. The gallows frame, over which the chains run from a wheel which I wind up. I wound it up for the Arctic. I wind it up higher for the Arctic than for the Columbia.

Q. On which side of the bridge was that wheel?

A. That wheel is on the down-town side.

Q. With which arm did you wind it up?

A. With my right arm, sir.

Q. Then, in winding it up, which direction do you look?

A. I generally look both ways wherever I have to look. That wheel is easily turned, except on this morning, when the
199 ice obstructed it. It is to be presumed the free motion of that bridge will of course be interfeared with by the ice. I had to leave the chain slack; the ice interfered with it. I had to leave a slack chain.

Q. The ice was giving you some trouble about the bridge?

A. Yes, sir.

Q. Then it required a little more than ordinary attention to that wheel?

A. Well, I had to leave the chain a little slack when the boat came in.

Q. There was nothing that the ice interfered with about the movements of the bridge?

A. There was a good deal of ice.

Q. There was nothing unusual about the movements?

A. There was nothing unusual about the movements of the bridge.

Q. You had leisure to look away from the wheel when you were winding it up, and to look at the Arctic when it came in?

A. I looked at the Arctic when she came in; yes, sir; I looked at her.

Q. How do you remember that it happened on this particular trip?

A. Because I went up after the gang plank was thrown on
200 —I went up and opened the gate to let the passengers out on to the street; when the passengers were going up some of them said I guess that lady was hurt; I began to look around to find what lady was hurt. I did not hear anything of it at all; the passengers had gone, then I went down to the boat again, partly down the slip, when I saw the gentleman who was here yesterday; I saw him coming up with some lady, and he went out to the horse cars out Delaware avenue.

Q. You thought that this was the lady that was hurt?

A. I thought that this lady was hurt.

Q. Did you report that to the superintendent, or to anybody, that that lady was hurt?

A. That that lady was hurt?

Q. Did you make a report that there was a lady hurt, and that the lady was in view?

A. I don't know when I saw the superintendent, whether it was that day or not, but I told him some lady was hurt on the boat.

Q. There was no inquiry made on the part of any officer whether this lady was hurt much or little?

A. We had no orders.

201 Capt. J. R. Bowen, sworn and examined.

By Mr. Dale:

Q. What is your occupation?

A. I am now in the retail boot and shoe business.
Q. What was your former occupation?
A. I was a steamboat captain and a pilot on the Gloucester ferry.
Q. How long?
A. For twenty years.
Q. When did you cease being a pilot?
A. About five years ago.
Q. Do you recollect the 31st day Jan., 1881?
A. I could not recollect the day exactly, but I remember this cold Monday that we had.
Q. When the navigation was interrupted on the Delaware?
A. Yes, sir.
Q. What did you do on that day?
A. There was a friend of mine across over to Camden, who keeps a store next to me, was telling me of the difficulty they were having in crossing the ferry.
Q. What did you do in consequence of something that you heard?
A. I had been a little interested, and out of curiosity I went upon the wharf below Market street to see the boats ply backwards and forwards?
Q. What time was this?
202 A. Between nine and eleven.
Q. What did you see?
A. I went on to the end of the wharf, and I saw the boat stick in the river. I saw the Pennsylvania boat, and when the Arctic came in I crawled up and got onto the fenders and got onto the boat after she came into the dock, and I went up onto the upper deck. I made two trips across the river to see her work in the ice. I saw the rest of the boats stuck, and I crossed over to see the boat working in the ice. That's what took me over there.
Q. Your experience as a captain on the Delaware for twenty years—taking that experience, what was the comparative difficulty of bringing the boat into the wharf on that day as compared with other days—I mean with your experience in view?
A. As far as my experience goes——
Objected to, unless the witness is brought down to this particular trip.
Q. What time did you take those trips?
A. Between nine and eleven I took two trips across on the boat.
Q. Did you see anything unusual in the way of the striking of the boat?
A. I did not see it strike any more than ordinarily the
203 coming in in that way; there is no human being who can bring a boat in without striking one side or the other when the crib is full of ice.
By the COURT: When the crib is full of ice, is it usual to strike one side or the other?
A. It is very often that they do, sir.
By the COURT: When it is full of ice you say it does happen, that it is impossible, it should not happen?

A. It is impossible to bring the boat in without striking one side or the other.

By Mr. DALE, to the COURT: I would like your honor to note that the weather report for the month of January shows that the mean average of the temperature was six degrees below the average.

Capt. HUTCHINSON recalled.

By Mr. DALE:

Q. You say that you have been connected with the boat for many years. Have you during that experience found any difficulty in by reason of having no policeman on the boat to look after the passengers?

Objected to.

Q. Has there been any trouble arising from the fact of not having had other deck hands or a policeman on the boat to look after the passengers?

Objected to.

Defendants close.

204 Mr. SHERMAN recalled:

By Mr. CARTY, to the COURT: I want to ask Mr. Sherman a question in reference to the force of the boat coming into the slip.

By the COURT: You already have this man's testimony.

By Mr. DIXON, to the WITNESS: What is your height—five feet six inches?

A. I cannot tell you, sir.

By Mr. DIXON to the COURT: He does not know his own height.

By the WITNESS, to the COURT: I do not know exactly.

205 And thereupon the counsel for plaintiff did request the learned judge to charge the jury as follows:

"Third. If the jury believe from the evidence that the defendants received the plaintiff as a passenger, and that they failed to provide her with a seat, or that she was unable to obtain a seat by reason of the crowded condition of the boat, and while standing in the cabin she was, without any fault of her own, thrown down and injured by a sudden shock to the boat, then the defendants are guilty of negligence, and your verdict should be for the plaintiff.

"Fourth. If the jury believe from the evidence that the defendants received the plaintiff, a woman 67 years of age, as a passenger, and that they failed to provide her with a seat, or that she was unable to obtain a seat by reason of the crowded condition of the boat, and while standing in the cabin she was, without any fault of her own, thrown down and injured by a sudden shock to the boat, then the defendants were guilty of negligence, and your verdict should be for the plaintiff."

206 And thereupon the learned judge did charge the jury as follows:

GENTLEMEN OF THE JURY:

That the plaintiff was injured—seriously injured—in the manner she has described, upon the defendants' boat, is not open to controversy, and is not controverted. It does not follow, however, that she is entitled to recover. To justify a verdict in her favor the evidence must satisfy you that the company defendant failed in its duty towards her. For the purpose of getting before you the respective rights of the parties the counsel upon one side and the other have presented points embracing their views.

The plaintiff asks the court to charge you—

First. "That if the jury believe from the evidence that the defendants could have entered the slip at the ferry without any unusual shock to the boat, by waiting a reasonable time for certain floating ice to pass down the river, and instead of waiting the defendants used undue force and violence in entering the slip, and the plaintiff was thereby injured, the defendants were guilty of negligence, and your verdict should be for the plaintiff."

207 It is sufficient to say that in the judgment of the court this point is inapplicable to the case; there is no evidence that by waiting a reasonable time the condition of things in the slip would have been so improved that the entrance could have been made with less force than was employed.

Second. "If the jury believe from the evidence that the defendant was compelled to use greater force on entering the slip on account of the ice therein than usual, and the force was used and the force thus used caused the plaintiff's injury, it is for you to judge whether under the circumstances proper care of the passengers did not require the defendants to warn the passengers against the danger likely to result from the use of such unusual force. If you find that under the circumstances such warning should have been given, and that the plaintiff's injury resulted from failure to give it, then you will find the defendants guilty of negligence in this respect."

I shall have occasion probably to refer to this subject again.

The third and fourth points are disaffirmed, and I will not read them.

The fifth point is as follows:

"If the jury believe from the evidence that the defendants could have entered the slip at the ferry with a shock of less violence
208 than the one inflicted, and that the extraordinary violence could have been avoided by due care, and if such extra violence the plaintiff suffered injury, the verdict must be for the plaintiff."

That is in terms correct. I shall again refer to that subject.

The defendants ask the court to charge you—

First. "Unless the jury are satisfied from the evidence that the defendants or their employees were guilty of negligence, or were wanting in proper skill in their manner of bringing the boat to the wharf, their verdict should be for the defendants."

That is true, if the court properly understands the point. I say to you to avoid misunderstanding that unless it be shown—

First. That there was want of care or skill in bringing the boat into the slip, or unless it is shown that the company was guilty of want of care in some other respects in protecting the passengers against impending danger, the company is not liable in this suit.

Second. The court is asked to say, "The company defendants are not insurers of their passengers' safety, and when a passenger is injured through an accident, which no reasonable precaution on
209 the part of the company or their employees would have prevented, the company is not liable for the damages suffered by said passenger."

That is true; the company is responsible only for proper care, a care required by the existing circumstances, and if an unavoidable accident ensues, whereby a passenger is injured, the passenger must bear the loss; the company is not liable, and cannot be required under such circumstances to respond in damages.

Third. "If the jury find that the pilot did not use a greater amount of power in bringing his boat into the dock than a reasonable and prudent pilot would have used under the peculiar condition of the river, and in other respects guided and directed his boat with proper skill and caution, then the plaintiff is not entitled to recover, even if she has unfortunately suffered a very serious injury."

That point cannot be affirmed as it is drawn. You have observed from reading that it is directed simply to one of the branches of the case presented—one of the question-, to wit, the exercise of care and skill on the part of the officers here referred to in the bring-
210 ing of the boat into the dock; then, of course, the company is not blamable on that account, notwithstanding the company might be blamable possibly, and of that I shall speak hereafter. The company might be blamable for want of the exercise of care in other respects for the protection of their passengers under the unusual circumstances.

Fourth. The court is asked to say to the jury "that if you find that the sudden jar to the boat which caused the plaintiff's fall resulted from the operation (obstruction) in the river by ice, and was not due to any negligence of the company's employees in handling the boat, then the plaintiff is not entitled to recover."

This point is defective, just as the other. It is directed simply to the bringing of the boat into the slip. If there was not any want of care there, and the shock resulted there from the condition of the river—was a necessary result from the condition of the river and the dock—then the question will arise, and does arise, whether or not any care in other respects was required upon the part of the company to guard the passengers against the danger that might result from such shock.

Fifth. We are asked to say "that the first question for the
211 jury to decide is, whether the person in charge of the boat used proper skill and care in bringing it into the wharf."

That is one question, and it may be considered first. The second

is quite as important, but this may be prudently and wisely considered first.

"And in determining that question the jury should take into consideration the evidence as to the ice in the river and in the slip, and its effect both in the way of obstruction or interference with the direction of the boat and the control of the rudder."

That is correct. All the difficulties existing may be considered. "And if they find that the captain was an officer of great skill, knowledge, and experience, and on the alert and using his best skill and judgment in the emergency, and that it was not practically possible under the circumstances to insure the landing of the vessel without incurring the risk of such a shock as was received, then the facts that such a shock did occur does not necessarily entitle the plaintiff to recover.

No, it does not necessarily entitle the plaintiff to recover, but if there was such a shock, rendered necessary by the existing
212 circumstances, of which the company had notice, and if the jury believe that it was of such a character as to tend to the danger which this plaintiff encountered, and she was unaware of it (and there is no evidence that she was aware of it), then it is for you to say whether there was any duty on the company to warn her and other passengers of the danger that they might brace themselves, lay hold of what was within their reach, or by other means, if possible, protect themselves against injury.

Such are the points.

Now, gentlemen, I state to you that there was no fault in taking the plaintiff on board this boat at the time she was taken, and under the circumstances in which she was taken. That the boat was crowded is clear. She was not crowded, however, beyond safety; that there were no seats sufficient to accommodate everybody is quite probable, if it is not clearly shown; but it is also shown by the evidence that it is not customary in such transportation to furnish seats for all the passengers who can be accommodated, who are accommodated; the distance they are to be carried is very short.
213 And it further appears that when the passengers are much fewer than the seats the majority of them stand. There was, therefore, no fault on the part of the company in taking this lady on board under the circumstances and as she was taken.

The case in the judgment of the court presents two questions:

First. Did the officers in charge of the boat exercise a proper degree of care and skill in its management?

Second. If they did, an- an unusual shock was necessary, unavoidable, in entering the slip, then was there an additional duty required of the company to guard the passengers against the danger?

As to the first: Were the officers guilty of negligence or want of skill in directing the vessel into the slip?

The plaintiff calls witnesses to show that there was a considerable shock, an unusual shock; that passengers were thrown down, and it is clear that she was thrown down and very seriously injured. The chandelier was thrown down; whether it is a very unusual thing for the chandelier to be thrown dow- may be doubted from the

evidence. The character of the shock you are asked to infer
214 on the part of the plaintiff from this evidence. You are asked to infer from the evidence want of care and skill on the part of the officers in bringing the boat in. The argument on the part of the plaintiff is that there was no occasion for such force as would produce this shock, and that it was therefore the result of a want of care or a want of skill on the part of the officers. It is an argument and inference drawn by the plaintiff from the testimony, and the counsel asked you to draw this inference, and thus conclude that the officers in charge of the boat were wanting in skill or wanting in care.

On the part of the company, defendant, however, the officers in charge of the boat are called, and they tell you what was done. They tell you the condition of the river, the condition of the slip; that but few boats were running; that all the boats of the Pennsylvania R. R. Company were idle, frozen up; that those boats were running; that this boat was specially *was* running, because it was new and staunch; that there was great difficulty in getting
215 through; that the period of time occupied in crossing the river was very unusual, the difficulty in entering the dock was extraordinary; they tell you of the care they exercised.

Now you will say whether it is safe to infer, as the plaintiff asks you to do, that these officers in charge of this boat were either wanting in care or wanting in skill. That there was a shock there is no doubt, but are you to attribute it to the want of skill or want of care on the part of these officers? I feel no hesitation in saying to you, and I believe it to be my duty to say, that the great weight of the evidence is against plaintiff here; that the weight of evidence fully justifies the conclusion that the officers in charge of this boat exercised all the skill and all the care required of them by law and their duty.

I say this to you while I do not take the question from you; you will say whether or not, looking at the question in the light of all the evidence, whether it is safe to find that the officers and men in charge of this boat failed either in care or in skill. If you find they did, and that the plaintiff's injury resulted from it, you
216 will find in her favor. Unless you do so find you will find this question in favor of defendants.

You pass then to the second question: Did the company exercise proper care for the safety of the passengers who were taken on board the boat? And in passing upon this question you are to consider all the circumstances. They were taken across the river safely; there was difficulty in getting over, but the boat was managed, so far as appears, with skill; she threaded her way amid the ice and reached the Pennsylvania side of the river. The slip was filled with floating ice—masses of it—many feet below the surface, on the surface, and above it. There was difficulty in entering the slip. If there was no negligence or want of care on the part of the officers, then the shock that occurred—and it cannot be doubted that there was more than the ordinary shock, I mean to say more than the ordinary shock that takes place when there is no obstruc-

tion the *the* slip—then I repeat that it follows that this shock was unavoidable. It does not make a very material difference, or probably any difference, whether the shock occurred from the boat
217 striking the bridge, as some of the witnesses call it, in front of the slip, or whether it was by reason of striking the fender at the side in passing in. According to the testimony of the plaintiff, the boat struck the bridge, as I understood the witness to call it, or the platform on which the passengers were landed. According to the testimony of the defendants, it struck the fender at one side, so as to produce a jar. It struck with such force to throw this woman down, and produce the condition of things which you may find actually resulting.

Ordinarily, when the boat strikes the fender the latter yields, as the witness described it to you, and the shock is but slight; it yields and the boat swings around; but upon this occasion, and the witness told you it was unavoidable, the ice had wedged itself in behind the fender, and the piles were frozen fast, so that the fender was unyielding, stationery, and when the boat struck it, it struck it with a shock, and as the captain said, with more than twice the force with which the fender is usually struck, and there was more than twice the ordinary shock.

218 Now, gentlemen, it is for you to say, supposing there was no want of care, no want of skill on the part of the officers of this boat, it is for you to say whether or not the shock necessarily incident to entering the slip was such as to *to* produce danger to the passengers; was it such? The river there and the slip had been in this condition for weeks. It is for you to say whether the condition of things there were such that it was reasonable to apprehend danger when passing in, danger from the shock; whether the company should have apprehended it, going in daily several times a day; whether they had such knowledge as should have induced them to apprehend danger to the passengers from the shock thus encountered; and if they should have apprehended such danger, it is for you to say whether they should not have guarded the passengers against this danger by calling their attention to it when the boat approached the bridge in this crowded condition.

I repeat, should the passengers have been warned of the danger which this plaintiff encountered? If they should, then it will be for you to say. If they should have been warned of their danger, if
219 there was danger of which the company was aware, should have been aware from their experience, and of which the passengers crossing occasionally were unaware, if there was danger of which they should have warned the passengers, and the failure to warn resulted, or tended to result, to the plaintiff's injury, then the company was negligent in failing to give the warning.

This case, as it seems to the court, comes down to that question.

I do not see anything else in it that is worthy of serious consideration but that.

Was there such a condition of things there as to produce danger to passengers? A danger of which the company was aware, having had experience of the condition of the slip for weeks? Was there

cause to apprehend danger such as this plaintiff encountered, and did her injury result from a failure to warn her? Could she have been saved from it by such warning and by such care on their parts? If there was such danger to be apprehended, of which the company was aware, and a failure to warn her, in your judgment led to her injury, then the company was negligent in failing to give that warning.

220 In considering whether there was such danger to be anticipated you must bear in mind the fact that during all the previous occasions of entering there no one was injured; so far as the evidence shows there was no one previously injured.

I will not dwell upon the subject; I repeat, I do not see any other serious question in this case.

Was the company guilty of negligence in this respect?

If it was, the plaintiff is entitled to your verdict; if it was not, the defendant is entitled to your verdict. As to the question of damages, the plaintiff is entitled, as has been said to you, if entitled to recover at all, she is entitled to be paid for her suffering, mental and bodily; she is entitled to be paid any expenses that she has been put to, and it has not been shown that she was put to any expense, and you must guess at nothing in this inquiry; she is entitled to recover for the loss of earning power if you find the injury to be permanent and the evidence justifies you in finding that, and that is all that you can find.

Plaintiff's counsel excepts to the answer to the third and fourth points of plaintiff.

221 And thereupon the counsel for the said plaintiff did then and there except to the aforesaid disaffirmance of the 3d and 4th points of pl'ff and charge and opinion of said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this twenty-first day of April, A. D. 1882.

WM. BUTLER. [L. S.]

[Endorsed.] Circuit court of the United States for eastern district of Penna. —— term, 18—. No. —. Bill of exceptions. Mary K. Burton *vs.* The West Jersey Ferry Co.

222 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania in the Third Circuit.

MARY K. BURTON
vs.
THE WEST JERSEY FERRY CO. } No 52. October Sess., 1881.

Know all men by these presents, that we, Mary K. Burton, pl'ff, and Charles H. Sherman and Thomas S. Leigh, are held and firmly bound unto the West Jersey Ferry Company in the full and just sum of five hundred dollars, to be paid to the said The West Jersey Ferry Company, their successors, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents,

Sealed with our seals, and dated this 17th day of May, A. D. 1882.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between the said Mary K. Burton against the West Jersey Ferry Company, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a

223 citation directed to the said defendants, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such, that if the said Mary K. Burton shall prosecute her writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

MARY K. BURTON. [SEAL.]
CHARLES H. SHERMAN. [SEAL.]
THOS. S. LEIGH. [SEAL.]

Sealed and delivered in presence of—
JEROME CARTY.
SAMUEL BELL.

Approved in open court May 26, 1882.
SAMUEL BELL, *Clerk.*

[Endorsed:] No. 52. October sess., 1881. Circuit court United States. Burton *vs.* West Jersey Ferry Co. Bond *sur* writ of error. Filed May 26, 1882.

224 UNITED STATES OF AMERICA, } *set:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the

original record and proceedings in the case of Mary K. Burton *vs* The West Jersey Ferry Company, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of these United States the one hundred and sixth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 242. Mary K. Burton, plaintiff in error, *vs.* The West Jersey Ferry Company. Filed 17th July, 1882.

114-474

Supreme Court of the United States.

October Term, 1884. No. 242.

MARY K. BURTON,

Plaintiff in Error,

vs.

THE WEST JERSEY FERRY COMPANY,

Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Brief of Plaintiff in Error.

B. Frank Clapp,
Jerome Carty,
Mayer Sulzberger,
Attorneys for Plaintiffs in Error.

V15

SUPREME COURT OF THE UNITED STATES.

October Term, 1884. No. 242.

MARY K. BURTON,
Plaintiff in Error,

vs.

THE WEST JERSEY FERRY COMPANY,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was an action on the case for damages for serious and permanent personal injuries which happened to the plaintiff, a woman sixty-seven years of age, on the defendant's ferry-boat "Arctic," on the morning of December 31, 1881, while crossing the Delaware River from Camden to Philadelphia as a passenger.

The winter of 1881 was exceedingly cold and inclement, so that the Delaware River was full of ice, and crossing from one side to the other was difficult and dangerous. Most of the boats of the defendant's company, and all of the boats of the other companies, had ceased making trips, owing to the ice; but the "Arctic," being comparatively a new boat and stronger than the others, was kept running by the defendant company. Owing to these circumstances the boat was very much crowded with people and horses and vehicles.

The circumstances of the accident and injury to plaintiff are best narrated by Mr. Charles H. Sherman, a passenger on the boat and a witness for the plaintiff, whose testimony was not contradicted in any essential particular. He says: "I came down to the ferry on that morning to cross the river; there were a great many there. There was some trouble up the river on account of the ice. There was an unusual number of people gathered; many had come from the other lines of ferries; they had arrived there before I went on board the boat. I do not think I was detained more than ten or fifteen minutes; we were at the ferry, waiting for the boat to start, and I was standing. The boat was completely filled, and all the standing room occupied; every carriage that could be got on was piled on the boat; every wagon that the boat would hold was packed on, dovetailed in, you might say, and the passengers were in the same way inside and out of the cabin. We came over very slowly, and when we got most on the other side the boat attempted to run into her slip. I cannot give a better description of the slip than by referring to these two recesses in this wall (indicating). That would just about show the position of the sides of the two slips. The boat occupied a certain position on the river, and I forget whether it was the lower or upper slip which we were attempting to enter; but I think it was the upper slip. The boat came across in this way (indicating), and attempted to get into her slip, and she struck on the corner of her slip, and the stream or tide caught her and swung her around so that she could not get into the slip, and she backed

out into the stream, and then made a second attempt, and started to go in, but with no better result; they run catecornered across the end of the slip, and the tide running out caught the stern of the boat and slew her around, and then they backed off again; and they started again to come into the slip, and it seemed as though they were bound to make it this time, and they seemed to come in with much more force, so that the boat went clear into the slip, and she struck right like that (indicating) up against the bridge with such a great force, that there were about a dozen or fifteen knocked down, passengers who were standing in the middle of the cabin. I stood about, perhaps, ten feet from where Mrs. Burton stood.

At the trial below it was not controverted that the plaintiff was a passenger on defendant's boat, and was seriously injured without her fault. The defendant's contention was that the injury was due to the act of God, and not to the omission of an act which it was the defendant's duty to perform, or the commission of an act which it was the defendant's duty to avoid. The act producing the injury was the violent shock to the boat produced by the forcible driving of the boat into the slip by the defendant.

The learned Judge below was requested by plaintiff to charge the jury as follows:

"*Third.*—If the jury believe from the evidence that the defendants received the plaintiff as a passenger, and that they failed to provide her with a seat, or that she was unable to obtain a seat by reason of the crowded condition of the boat, and while standing in the cabin she was, without any fault of her own, thrown down and injured by a sudden shock to the boat, then the defendants are guilty of negligence, and your verdict should be for the plaintiff.

"*Fourth.*—If the jury believe from the evidence that the defendants received the plaintiff, a woman sixty-seven years of age, as a passenger, and that they failed to provide her with a seat, or that she was unable to obtain a seat by reason of the crowded condition of the boat, and while

standing in the cabin, she was without any fault of her own, thrown down and injured by a sudden shock to the boat, then the defendants were guilty of negligence, and your verdict should be for the plaintiff."

The learned Judge, after disaffirming the third and fourth points, which he declined to read to the jury, and restricting counsel in their address to the jury according to his ruling, charged the jury *inter alia*, as follows: (See Transcript, p. 83.)

"Now, gentlemen, I state to you that there was no fault "in taking the plaintiff on board this boat, at the time she "was taken, and under the circumstances in which she was "taken."

Also, Transcript, p. 84.—"I feel no hesitation in saying "to you, and I believe it to be my duty to say, that the great "weight of the evidence is against plaintiff here; that the "weight of evidence fully justifies the conclusion that the "officers in charge of this boat exercised all the skill and "all the care required of them by law and their duty."

The jury rendered a verdict for defendant.

The plaintiff's contentions were and are:

First.—That the act of driving the boat so violently as to injure passengers was negligence *per se.*

Second.—That the act of overcrowding the boat so as to place passengers in extraordinary peril from which injury results was negligence *per se.*

Third.—That at all events they were circumstances to submit to the jury as evidence of negligence.

The learned Judge below considered that the circumstances of the case were such as to excuse the defendant in both respects, and deemed it his duty to give the jury what amounted to binding instructions in favor of the defendant on those points.

The questions for discussion are, therefore:

I. May a carrier propel a boat so violently that passengers without negligence on their part are hurt thereby?

II. May a carrier overcrowd his boat and not be held responsible for injury resulting therefrom?

III. May a Court refuse to submit these two facts to a jury as evidence of negligence.

IV.—Ought a Court to charge that these acts are negligence *per se*.

SPECIFICATION OF ERROR.

First.—The Court below erred in disaffirming the third point of plaintiff, which is as follows: "If the jury believe "from the evidence, that the defendants received the plaintiff "as a passenger, and that they failed to provide her with a "seat, or that she was unable to obtain a seat by reason of "the crowded condition of the boat, and while standing in "the cabin she was, without any fault of her own, thrown "down and injured by a sudden shock to the boat, then the "defendants are guilty of negligence, and your verdict "should be for the plaintiff."

Second.—The Court below erred in disaffirming the fourth point of plaintiff, which is as follows: "If the jury "believe from the evidence that the defendants received the "plaintiff, a woman sixty-seven years of age, as a passenger, "and that they failed to provide her with a seat, or that she "was unable to obtain a seat by reason of the crowded con-"dition of the boat, and while standing in the cabin she was, "without any fault of her own, thrown down and injured "by a sudden shock to the boat, then the defendants were "guilty of negligence, and your verdict should be for the "plaintiff."

Third.—The Court below erred in charging the jury as follows: "Now, gentlemen, I state to you that there was no

"fault in taking the plaintiff on board this boat at the time "she was taken."

Also: "I feel no hesitation in saying to you, and I be- "lieve it to be my duty to say, that the great weight of the "evidence is against the plaintiff here; that the weight of "evidence fully justifies the conclusion that the officers in "charge of this boat exercised all the skill and all the care "required of them by law and their duty."

ARGUMENT.

The only question upon which the Court of last resort is asked to pass is, whether the learned Judge in the Court below was correct in disaffirming the third and fourth points of the plaintiff, and instructing the jury that the taking of the plaintiff on an overcrowded boat was not a fault, under the general circumstances of the case, thereby transferring the benefit of any doubt in the minds of the jury from the plaintiff to the defendant. Such a construction of the law seems to plaintiff to be contrary to all fundamental principles of the law of negligence as to common carriers of passengers. There is indeed no absolute rule as to what constitutes negligence,. it is, dependent upon the particular circumstances of each case, and where a higher degree of care is demanded under certain circumstances than others, and where the duty and the extent of its performance are to be ascertained as facts, the jury alone can determine what is negligence and whether it has been proven.

Carriers of passengers are bound to the exercise of the utmost degree of diligence and care. The slightest neglect against which human prudence and foresight may guard, and by which hurt or loss is occasioned, will render them liable to answer in damages. Nay, the mere happening of

an injurious accident raises, *prima facie*, a presumption of neglect, and throws upon the carrier the *onus* of showing it did not exist.

Laing vs. *Colder, et. al.* Opinion by *Bell, J.* (1848), 8 *Penna. St.*, 482.

When a passenger in a railway train is injured without fault on his part, the law presumes negligence in the carrier, for he undertook to carry safely, and companies are held to the strictest measure of accountability.

Railroad vs. *Norton*. Opinion of the Court by *Woodward, J.* (1855), 24 *Ibid*, 469.

And the *onus* of showing that negligence did not exist is thrown upon the company.

Sullivan vs. *Philada. & Reading R. R. Co.* Opinion of the Court by *Woodward, J.* (1858); 30 *Ibid*, 234.

The failure of the carrier to carry a passenger safely is *prima facie* evidence that there was carelessness, or negligence, or want of skill on the part of the carrier.

Stokes vs. *Saltonstall*, Opinion of the Court, by *Barbour, J.* (1839), 13 *Peters*, 181.

Shearman & Redfield on Negligence, § 12.

Stephen's Nisi Prius, 983.

Story on Bailments, § 601 *a*.

2 *Greenl. on Ev.* § 201.

The case of *Christie* vs. *Griggs* (1809), 2 *Campbell*, 79, was an action against the proprietor of a stage-coach for negligence, whereby the coach broke down, and the plaintiff, traveling by it as a passenger, was hurt. *Sir James Mansfield, C. J.*, said (p. 80): "I think the plaintiff has made a "*prima facie* case by proving his going on the coach, the "accident and the damage he has suffered. It now lies on "the other side to show that the coach was as good a coach "as could be made, and that the driver was as skilful a driver "as could anywhere be found. When the breaking down or "overturning of the coach is proved, negligence on the part "of the owner is implied. He has always the means to rebut

" this presumption if it be unfounded; and it is now incum-
" bent on the defendant to make out that the damage in this
" case arose from what the law considers *a mere accident.*"

The carrier of passengers in conveyances and vehicles propelled by steam, is bound to use every precaution which human skill, care and foresight can provide. In an action against such carrier, the burden of establishing negligence is upon the plaintiff, but where his evidence raises a presumption of negligence by showing the happening of an accident, which usually, and according to the ordinary course of things, would not happen if proper care was exercised, the burden is cast upon the defendant to relieve himself from that presumption.

Caldwell vs. *The New Jersey Steamboat Co.*, Opinion by *Church, Ch. J.* (1872), 47 *New York*, 282.

The law imposes upon the owners of boats engaged in carrying passengers, their agents, servants and employees, the duty of exercising the highest degree of care in the navigation and management of their boats.

Sherlock, et al., vs. *Alling, Adm'r*, Opinion by *Osborn, J.* (1873), 44 *Indiana*, 184.

A passenger in a railway car need only show that he has received an injury to make a *prima facie* case against the carrier; the carrier must rebut the presumption in order to exonerate himself.

Galena & Chicago Railway vs. *Yarwood*, 17 *Illinois*, 509.

When a carrier of passengers is carrying them by the agency of steam, and injury is occasioned to them thereby, the carrier cannot escape liability, unless it appears that the accident happened from causes beyond his control, and to which neither his own negligence nor that of his employees, nor the negligence of the manufacturer of the machinery in any way contributed.

Carroll vs. *The Staten Island R. R. Co.*

Opinion of the Court by *Andrews, J.* (1874), 58 *New York*, 126.

In the case of *Smith* vs. *St. Paul City Ry. Co.* (1884), 16 *American and English Railroad Cases*, 310, *Vanderburgh, J.*, in delivering the opinion of the Supreme Court of Minnesota, said (p. 311): "As respects hazards and dangers incident to the business or employment, the law enjoins upon such carrier [of passengers] the highest degree of care consistent with its undertaking, and it is responsible for the slightest negligence. *Wilson* v. *N. P. R. Co.*, 26 *Minn.*, 280; *Warren* v. *Railroad Co.*, 8 *Allen*, 233; 43 *Amer., Dec.*, 354, 356, *notes and cases.*

It is a well recognized doctrine that where an injury occurs to a passenger by reason of any occurrence which might be attributable to the negligence of the carrier, the occurrence of the accident itself constitutes a *prima facie* presumption of negligence.

Notes and cases cited therein, to the last cited case.

The plaintiff contends:

First.—That the act of driving the boat so violently as to injure passengers was negligence *per se.*

In the case of *The Philadelphia & Reading R. R. Co.* vs. *Derby* (1852), 14 *Howard*, 468, *Mr. Justice Grier*, in delivering the opinion of the Court, said (p. 486): "When carriers "undertake to convey persons by the powerful agency of "steam, public policy and safety require that they be held "to the greater possible care and diligence. And whether "the consideration for such transportation be pecuniary or "otherwise, the personal safety of the passengers should not "be left to the sport of chance or the negligence of careless "agents. Any negligence, in such cases, may well deserve "the epithet of 'gross.'"

In the *Steamboat New World, et al.*, vs. *King* (1853), 16 *Howard*, 469, *Mr. Justice Curtis*, in delivering the opinion of the Court, after quoting the above language from the case of the *Railroad Company* vs. *Derby*, said (p. 474): "We "desire to be understood to reaffirm that doctrine, as resting "not only on public policy, but on sound principles of law."

In the case of *The Pennsylvania Company* vs. *Roy* (1880),

102 *U. S.*, 451, *Mr. Justice Harlan*, in delivering the opinion of the Court, said (p. 456): "The carrier is required, as to "passengers, to observe the utmost caution characteristic of "very careful prudent men. He is responsible for injuries "received by passengers in the course of their transporta- "tion which might have been avoided or guarded against "by the exercise, upon his part, of extraordinary vigilance, "aided by the highest skill. And this caution and vigilance "must necessarily be extended to all the agencies or means "employed by the carrier in the transportation of the "passenger."

The carrier must also use prudence in starting, and not set off with a sudden and violent jerk. And, in stopping, *he must not pull up suddenly, so as to throw passengers off their balance*, unless it is positively necessary to do so.

Shearman and Redfield on Negligence, § 276.

The law very wisely exacts from a common carrier of passengers for hire the utmost care and skill which prudent men are accustomed to use under similar circumstances. This rule has been constantly applied to the proprietors of stage coaches and *steamboats*.

Ibid, § 266.

In the case of *The Camden and Philadelphia Steamboat Ferry Company* vs. *Monaghan* (1881), 10, *Weekly Notes of Cases*, (*Penna.*) 46. Opinion of the Court by *Green, J.*, the plaintiff, a passenger in a ferry-boat, as the latter approached the Philadelphia slip, in common with her fellow passengers, stood up ready to go on shore as soon as the boat landed; she moved towards the front of the boat, and the boat bumped into the bridge at the landing with sufficient violence to throw down the plaintiff and cause thereby, directly, the injuries for which she brought the action: *Held*, that the plaintiff had not been guilty of contributory negligence (see opinion by Green, J.), and the plaintiff recovered $3,200 damages.

The structure of steamboats must be such as to enable them, in proportion to the risks to which they will be exposed,

to apply the improvements of mechanical art for the safe transit of passengers.

In the management of steamboats when on the water, the same degree of prudence and skill (*mutatis mutandis*) is required as is required in the management of steam-cars on the land.

Wharton on Negligence, § 638.

Second.—That the act of placing passengers in extraordinary peril by overcrowding the boat, in not providing seats for all the passengers, from which injury results, is negligence *per se.*

In the case of *The Pittsburg and Connellsville Railroad Company* vs. *McClurg* (1867), 56 *Pa. St.*) 294, *Thompson, C. J.*, in delivering the opinion of the Court, said (p. 296): "When a passenger on a railroad purchases his ticket, "it entitles him to a seat in the cars."

In the case of the *Camden and Atlantic Railroad Company* vs. *Hoosey* (1882), 12 *Weekly Notes of Cases*, (*Penna.*) 1, *Sterrett, J.*, in delivering the opinion of the Court, said (p. 2): "It cannot be questioned "that, as a general rule, and under ordinary circum- "stances, it is the duty of such (railroad) company to "provide suitable car accommodations and seats for those "who it undertakes to carry; and if a passenger, exercising "reasonable care and prudence, is injured in consequence of "the company's neglect of duty in that regard, the latter is "liable to respond in damages for the injury thus occasioned "solely by its own negligence."

Proof that at the time of the accident there were more passengers than the statute allows, is conclusive evidence of negligence.

Stephen's Nisi Prius, 983. *Citing: Israel* vs. *Clark*, 4 *Esp. N. P. C.*, 259.

The carrier must have carriages adequate to the work to which they are subjected, and he is liable to any damage caused by failure of his duty in this respect.

Suitable seats, also, must be provided for passengers, such accommodations to be graded by the character and business of the road. To put passengers into unsuitable places, whereby they incur damage, may be negligence. If the carrier overcrowd the carriage, and injury result, he is liable for the damage.

Wharton on Negligence, §§ 628 & 628 *a*. *Citing: Jackson* vs. *R. R.* (1877) *L. R.*, 10 *C. P.* 49, *S. C. aff. on App.*, *L. R.* 2 *C. P. D.*, 125.

Where the injury resulted from overloading the coach the proprietor has been held liable.

2 *Greenl. on Ev.*, § 221. *Citing: Israel* vs. *Clark*, 4 *Esp.*, 259.

The "proper accommodation" which by the general railroad Act of New York, railroad companies are required to furnish to passengers, implies not only space enough within the cars to contain the passengers, but also the means of sitting in the usual manner during the journey.

A railroad company, to entitle itself to the protection of the statute, in case of injury to a passenger while upon the platform, is bound to show that it furnished not only room in the cars, but *seats*. If there are no vacant seats, a passenger is not chargeable with fault, nor exposed to the statute for remaining on the platform.

Willis vs. *The Long Island R. R. Co.*, Opinion of the Court by *Emmott*, *J.* (1860), 32 *Barbour* (*N. Y.*), 398.

It is no excuse to say that the distance is short between the two cities, and that many people stand even when no more persons are on the boat than can be seated. And in this regard it may be said that one of the greatest causes of accidents in traveling in the United States is the practice of common carriers of passengers, even under ordinary circumstances, of carrying more people than can be comfortably and conveniently seated. This is *prima facie* evidence of negligence abroad, and shifts the burden of proof in all cases where an injury occurs, and *a fortiori* this doctrine should be followed under the exceptional circumstances of danger shown by the evidence to have existed in this case.

It is clearly the duty of a stage proprietor to see that the safety of his passengers is not put at hazard by an excessive load; and if he disregards or violates his duty in this respect he is liable for any injury that may follow. Nor can it be regarded as a legal excuse for such misconduct, that loads of the same, or even greater weight, have been previously transported with safety upon the same road.

Maury vs. *Talmadge*, *Cricuit Court of the U. S., Ohio, July Term*, 1840, 2 *McLean*, 166.

When all the seats on the boat were filled it was the duty of the company defendant not to permit the plaintiff to come upon the boat.

In the case of *Humphreys* vs. *The County of Armstrong*, (1867) 56 *Pa. St.*, 204, a bridge fell as a resident in the neighborhood was passing over, and injured him. In an action by him against the county, the Court charged that if the plaintiff knew the condition of the bridge, notice or warning would not be necessary.

Held to be error. The passing of the plaintiff over the bridge with knowledge of its unsafe condition, but without distinct notice to him or the public not to use was not contributory negligence on his part at all.

It is the duty of county commissioners, being informed that a county bridge was unsafe, to examine it thoroughly, and repair it so as to render it perfectly safe, *or to close it up so as to prevent the public from using it.*

Read, J., in delivering the opinion of the Court, said (p. 210): "If the ruling of the Court below is correct, then "a railroad company with high trestle bridges, with the "same force might say to a passenger, 'You knew our road "'was very dangerous, why did you run the risk of an acci-"'dent and consequent injury.'"

A township is liable for an injury occasioned by the dangerous condition of a road kept open by the township authorities.

Township of Aston vs. *McClure*. *Id.* vs. *Quigley* (1883). Opinion of the Court by *Mercur, C. J.*, 102, *Pa. St.*, 322.

In *Gibbs* vs. *Trustees of the Liverpool Docks*, 3 *Hurlst & N.*, 164, the *Exchequer chamber held*, that when they knew the dock could not be navigated without danger, they should have closed it to the public, "and for the consequences of this breach of duty we think they are responsible in an action." This was *affirmed* in the *House of Lords; Law Rep.*, 1 *H. L.*, 98, June 5, 1866; *Eng. & Irish Appeals*, 35 *L. J. R.*, *Exch.*, 225.

Even if it were not negligence *per se* to take plaintiff on a crowded boat. As the defendant company accepted the fare of the plaintiff and permitted her to come on their boat, it became their duty to notify the plaintiff that the slip was filled with ice (page 50), and that the boat was about to be driven with extraordinary force, in order that she (the plaintiff) might be prepared for the shock caused by such violent driving of the boat.

In the case of *Laing* vs. *Colder, et al.* (1848), 8 *Penna. St.*, 479, *Bell, J.*, in delivering the opinion of the Court, said (page 483): "If there be any part of the road, a parti-"cular passage more than ordinarily dangerous, or requiring "superior circumspection on the part of the passenger, the "conductor of the vehicle is bound to give due notice of it, "and a failure to do so will make his principal responsible."

It is the duty of a driver to caution the passengers when he is about to pass over a piece of road, bridge, etc., attended with danger.

Stokes vs. *Saltonstall*, Opinion of the Court by *Mr. Justice Barbour* (1839), 13 *Peters*, 192.

Maury vs. *Talmadge, Circuit Court of the U. S., Ohio, July Term*, 1840, 2 *McLean*, 157.

McLean vs. *Burbank*, Opinion of the Court by *McMillan, J.* (1866), 11 *Minnesota*, 277.

Dudley vs. *Smith*, Opinion by *Lord Ellenborough* (1808), 1 *Campbell*, 167.

Story on Bailments, § 598.

2 *Greenl. on Ev.*, § 221.

Third.—The plaintiff, indeed, had a right to expect that her trip on the boat should be a safe one, for the defendants were bound, under the circumstances of the case, the over-crowding of the boat and the presence of a large amount of ice in the slip, to use extraordinary care for her protection.

In the case of *Bennett* vs. *Railroad Co.* (1880), 102 *U. S.*, 577, *Mr. Justice Harlan*, in delivering the opinion of the Court, said (p. 580): "The owner or occupant of land who, "by invitation, express or implied, induces or leads others "to come upon his premises, for any lawful purpose, is "liable in damages to such persons—they using due care— "for injuries occasioned by the unsafe condition of the land "or its approaches, if such condition was known to him and "not to them, and was negligently suffered to exist, *without* "*timely notice to the public, or to those who were likely to act upon* "*such invitation. Railroad Company* vs. *Hanning*, 15 *Wall.*, "649; *Carleton and Others* vs. *Franconia Iron and Steel Co.*, "99 *Mass.*, 216; *Sweeny* vs. *Old Colony and Newport Railroad* "*Co.*, 10 *Allen* (*Mass.*), 368; *Wharton, Negligence, Sects.* 349– "352; *Cooley, Torts,* 604–607, and authorities cited by those "authors. The last named author says that when one "'expressly or by implication invites others to come upon "'his premises, whether for business or for any other pur- "'pose, *it is his duty to be reasonably sure that he is not inviting* "'*them into danger*, and to that end he must exercise ordinary "'care and prudence to render the premises reasonably safe "'for the visit.'"

The case of *Geddes and wife* vs. *Metropolitan Railroad Company* (1869), 103 *Mass.*, 391 was an action brought by a woman against common carriers of passengers to recover, for personal injuries, resulting from her falling from their coach. There was evidence tending to show that the driver stopped the coach to receive her as a passenger; that the coach was crowded and all the seats in it were occupied; and that, immediately after she had got in, and when she was standing within the door, she was thrown out of the coach by its violent jerk at starting.

Ames, J., in delivering the opinion of the court, said

(p. 394): "The defendants by the act of stopping the car-
"riage at her (the plaintiff's) signal, and opening the door
"for her to enter, must be considered, not merely as giving
"her an opportunity to judge whether it would be safe and
"convenient for her to take passage, but as inviting her to
"do so, and assuring her that her passage should be a safe
"one, at least so far as depended upon the exercise of rea-
"sonable and ordinary care, diligence and skill on their part,
"in driving and managing their horses.

"If, when the omnibus is already in that condition
"(crowded and overloaded), they assume the responsibility
"of admitting an additional passenger, their contract with
"him, or rather their obligation to him is that *they will*
"*furnish such increased and more watchful and solicitous care,*
"*skill and attention as the crowded condition of the vehicle requires.*"

The obligation of a stage proprietor in regard to carrying passengers safely has respect to the team, *the load*, *the state of the road*, as well as the manner of driving.

Taylor vs. *Day*. Opinion of the Court by *Redfield J.* (1844), 16 *Vermont*, 566.

Fourth.—As these acts of the defendant were negligence *per se*, the court below not only might have but should have declared them to be such to the jury.

There are, it is true, some cases in which a Court can determine what omissions constitute negligence. They are those in which the precise measure of duty is determinate, the same under all circumstances. When the duty is defined, a failure to perform it is of course negligence, and may be so declared by the Court. (Per *Strong*, *J.*, in delivering the opinion of the Court.)

McCully vs. *Clarke & Thaw* (1861), 40 *Pa. St.*, 406.

Catawissa R. R. Co. vs. *Armstrong* (1865), 49 *Ibid*, 186.

Id. vs. *Id.* (1866), 52 *Ibid*, 282.

Philadelphia, Wilmington & Balto. R. R. Co. vs. *Stinger* (1875), 78 *Ibid*, 219.

North Penna. R. R. Co. vs. *Heileman* (1865), 49 *Ibid*, 63.

West Chester & Philadelphia R. R. Co. vs. *McElwee* (1871), 67 *Ibid*, 311.

Gerety vs. *Philadelphia, Wilmington & Balto. R. R. Co.* (1876), 81 *Ibid*, 274.

Penna. R. R. Co. vs. *Beale* (1873), 73 *Ibid*, 504.

Goshorn vs. *Smith* (1880), 92 *Ibid*, 435.

It was the duty of the Judge under the points submitted, to instruct the jury fully and plainly upon the law of negligence.

Pittsburg, Ft. Wayne & Chicago R. R. vs. *Evans* (1866), 53 *Pa. St.*, 254.

Gramlich vs. *Wurst, et al.* (1878), 86 *Ibid*, 78.

King vs. *Thompson, et ux.* (1878), 87 *Ibid*, 369.

City of Harrisburg vs. *Saylor* (1878), *Ibid*, 216.

Penna. R. R. Co. vs. *Fries* (1878), *Ibid*, 234.

Nagle vs. *Allegheny Valley R. R. Co.* (1878), 88 *Ibid*, 35.

Reading & Columbia R. R. Co. vs. *Ritchie* (1883), 13 *Weekly Notes of Cases (Penna.)*, 197.

Fifth.—But even if the learned Judge did not consider the acts complained of to be negligence *per se* on the part of the defendant company, the circumstances of the case were such as should have been, at all events, submitted to the jury as evidence of negligence.

The question of negligence ought, generally, to be submitted to the jury.

Humphreys vs. *Reed* (1841), 6 *Wharton (Penna.)*, 434.

McCully vs. *Clarke & Thaw* (1861), 40 *Penna. St.*, 399.

Lackawanna & Bloomsburg R. R. Co. vs. *Doak, et al.* (1866), 52 *Ibid*, 379.

Frankford & Bristol Turnpike Co. vs. *Philadelphia & Trenton R. R. Co.* (1867), 54 *Ibid*, 345.

Stiles vs. *Geesey* (1872), 71 *Ibid*, 439.

Philadelphia City Passenger Railway Co. vs. *Hassard* (1874), 75 *Ibid*, 367.

Hydraulic Works Co. vs. *Orr, et ux.* (1877), 83 *Ibid*, 332.

Philada. & Reading R. R. Co. vs. *Killips* (1879), 88 *Ibid*, 405.

North Penna. R. R. Co. vs. *Kirk* (1879), 90 *Ibid*, 15.

Lehigh Valley R. R. Co. vs. *McKeen* (1879), *Ibid*, 122.

Fritsch, et ux., vs. *City of Allegheny* (1879), 91 *Ibid*, 226.

McIlvaine vs. *Lantz* (1882), 100 *Ibid*, 586.

Borough of Easton vs. *Neff* (1883), 102 *Ibid*, 474.

Philada., Wilmington & Balto. R. R. Co. vs. *Keenan* (1883), 103 *Ibid*, 124.

Born vs. *Plank Road Co.* (1882), 12 *Weekly Notes of Cases* (*Penna.*), 283.

Pittsburgh, Buffalo & Western R. R. Co. vs. *Rohrman* (1883), 13 *Ibid*, 258.

Germantown Pass. R'lw'y Co. vs. *Brophy* (1884), 14 *Ibid*, 213.

What is negligence is always a question for the jury, when the measure of duty is ordinary and reasonable care; and where the standard of the degree of care shifts with circumstances.

West Chester & Philada. R. R. Co. vs. *McElwee* (1871), 67 *Penna. St.*, 311.

Johnson vs. *The West Chester & Philada. R. R. Co.* (1872), 70 *Ibid*, 357.

McKee vs. *Bidwell* (1873), 74 *Ibid*, 218.

Crissey vs. *Hestonville, Mantua & Fairmount Pass. Railway Co.* (1874), 75 *Ibid*, 83.

Fox vs. *Booth* (1875), 1 *Weekly Notes of Cases* (*Penna.*), 177.

Whether such circumstances exist as will repel the legal presumption of negligence, is a question of fact to be determined by the jury, from all the evidence in the case.

Sullivan vs. *The Philada. & Reading R. R. Co.* (1858), 30 *Penna. St.*, 234.

In the case of the *Continental Passenger Railway Co.* vs. *Swaim* [1883], 13 *Weekly Notes of Cases* (*Penna.*), 41, the plaintiff, a woman, entered a crowded street car on a stormy night, and, being unable to obtain a seat or a strap by which

to hold on, was obliged to stand. The horses were baulky, and came to a stop near the track of the Reading R. R. Company at Pennsylvania Avenue. The conductor of the car, being unable to start the car without assistance, asked aid of a driver of a team of eight mules. The team started the car with a sudden jerk, which threw the woman backward, injuring her spine. In an action brought by her against the company to recover damages for her injuries. *Held*, that the question was for the jury, whether or not defendant had been guilty of negligence.

In *Gaynor* vs. *Old Colony & Newport Railway Co.* (1868), 100 *Mass.*, 208, *Cole, J.*, said (p. 212): "When the circumstances under which the plaintiff acts are complicated, and "the general knowledge and experience of men do not at "once condemn his conduct as careless, it is plainly to be "submitted to the jury. What is ordinary care in such "cases, even though the facts are undisputed, is peculiarly a "question of fact to be determined by the jury under proper "instructions. It is the judgment and experience of the "jury, and not of the judge, which is to be appealed to."

In *Geddes and wife* vs. *Metropolitan Railroad Company*, *supra*, it was *held*, that there was some evidence to go to the jury.

At the trial of an indictment of a railroad corporation on the *Gen. Sts. c.* 63, § 97, for causing the death of a passenger by gross negligence of their servants, all the facts were agreed. *Held*, that the defendants had no ground of exception to the refusal of a request for a ruling that there was no evidence of negligence, and to the submission of that question to the jury.

Commonwealth vs. *Vermont and Massachusetts Railroad Company*, *Opinion by Ames, J.* (1871), 108 *Mass.*, 7.

In the case of *Treat* vs. *Boston & Lowell Railroad* (1881), 131 *Mass.*, 371, opinion by *Devens, J.*, a passenger in a car of the railroad, on the train approaching the station to which he was going, left his seat and tried to make his way to the door of the car, in order to leave the train at the sta-

tion. It was a day of great public excitement (April 19, 1875), and the train, which was a very long one, was overloaded with people, who filled all the seats, passageways and platforms, and even occupied the roofs of the cars. The train did not come to a full stop on reaching the station, and the passenger, in making his way through the crowd, reached the platform, and, in the surging of the crowd, fell or was pushed out on the platform and down the steps of the car, and after holding on with one hand for a short distance, he finally fell to the ground and was injured. *Held*, in an action by him against the railroad corporation, that the question whether the plaintiff was in the exercise of due care, and whether the defendant negligently and improperly managed its train so that the plaintiff's injury was caused thereby, should have been submitted to the jury.

The doctrine of the above case was affirmed by *C. Allen, J.*, in *Fleck* vs. *Union Railway Company* (1883,) 134 *Mass.*, 480.

In that case, a passenger in a street car, after signalling to the conductor to stop the car, left his seat and stood for a moment, while the car was in motion, on the rear platform, upon which there was an accumulation of snow and ice, rendering the platform slippery, expecting that the car would stop so that he could alight, and omitted to take hold of the rail. The car jolted and he was thrown off. *Held*, that whether he was guilty of such negligence as to preclude his maintaining an action for the injuries received, was a question of fact for the jury, and not of law for the Court.

Counsel for plaintiff conclude by calling attention to the remarks of Lord Chief Justice Cockburn in the case of *Jackson* vs. *The Metropolitan Railway Co*, 2 *L. R., C. P. Div.*, 138, as to the province of the Court and jury in questions of negligence, which remarks appear very pertinent and applicable to the case in hand, and which would clearly demonstrate that the learned Judge in the Court below was wrong in not submitting the question of the overcrowding

the boat as an element in the case to the jury, and affirming the 3d and 4th points of plaintiff. His Lordship says:

"The only question for our decision is that on which "leave to move was reserved at the trial, namely, whether "there was any evidence of negligence to go to the jury. "In the Court below there was the further question on the "rule *nisi* whether the verdict was or was not against the "weight of the evidence; and the decision was in favor of "the plaintiff. But with this part of the case we have "no concern beyond this; that if the evidence is sufficient to "support the verdict, *a fortiori* it must have been such as should "be submitted to the jury. The two questions, however, must "not be confounded. Even if we should be led to think that "the verdict should have been for the defendants, we must "not allow that opinion to sway our judgment on the only "question submitted to us, namely, whether there was any "evidence to be left to the jury. And there is greater "reason for saying so since the law on this subject "was finally settled by the judgment of the House of "Lords in the case of *Bridges* vs. *North London Ry. Co.*, "*Law Rep.* 7, *H. L.*, 213. Prior to this decision Judges "were sometimes in the habit of dealing with the "question of negligence as one on which it was compe- "tent to the Judges of the trial, and therefore to the Court "in Banc, to determine whether the facts proved constituted "negligence or not. The decision of the House of Lords "has placed the matter on what I cannot but think is the "right footing. The question of negligence is one, not of "law but of facts, and, like every other question of fact, is "for the jury and not the judge. Not that the proper func- "tions of the Judge are at all infringed on by the decision "just referred to. It still remains with the Judge on this, "as on any other issue of fact, to determine whether there "is evidence to go to the jury. It is still the province of "the Court in Banc to determine on motion for a new trial "whether the verdict is according to the weight of the evi- "dence, and if it be not to order a new trial and submit the "question to another jury. But this is the only course

"open. The question of negligence, if there be any evi-
"dence to be submitted to the jury, is for the jury alone,
"and must be decided by the jury as a question of fact. Judges
"must, therefore, now be careful both in deciding whether
"there is evidence to be left to the jury, and whether the
"verdict is in accordance with the evidence; as also that in
"so deciding they do not permit their individual views on
"the subject of negligence to control or supersede the deci-
"sion of the jury, on a matter which it is exclusively the
"province of the jury to determine as a question of facts."

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114-474

No. 242. *Of October Sessions, 1884.*

In the Supreme Court of the United States.

MARY K. BURTON,
Plaintiff in Error,

vs.

THE WEST JERSEY FERRY COMPANY,
Defendants in Error.

BRIEF OF ARGUMENT ON BEHALF OF THE DEFENDANTS IN ERROR.

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In the Supreme Court of the United States.

Mary K. Burton, Plaintiff in Error,	Of October Sessions, 1884.
vs.	
The West Jersey Ferry Company, Defendant in Error.	No. 242.

STATEMENT OF THE FACTS.

The accident for which the plaintiff seeks to recover damages from the defendant occurred January 31st, 1881, not December 31st, as stated in paper-book of plaintiff in error. The winter of 1880 and 1881 was one of great severity. The cold began early in December, and continued without interruption through the succeeding months. The effect of this was to fill the river Delaware, between Camden and Philadelphia, with large fields of ice. (Record, pages 34, 43, 44.) The island in the middle of the Delaware, opposite the city of Philadelphia, known as Smith's Island, contracts the channel, and the ice, by the tide, was very much jammed, particularly in the slips, so that most of the ferry boats running between the two cities were obliged to cease their trips. The Arctic, upon which the accident occurred, was a new iron boat with powerful engines, which enabled it to cross while the less efficient boats were caught in the ice-fields. (Record, page 45.)

The railroad ferry boats being unable to cross, the entire travel between the two cities sought to cross by the boats of the defendant company, who, on that day, carried five times

their usual number of passengers. There was no suggestion in the case that the ferry boat Arctic lacked any of the appliances which modern improvement has introduced for the safety and comfort of the passengers.

The officers, pilots, and crew of the boat were skilled men, many of them having been engaged in the navigation of the river for upwards of twenty-five years. The slips and dock were provided with wings, so constructed as to rebound from the incoming boats, and thus lessen the necessary shock of contact with the wharf, but upon the day of the accident the ice, which had crowded into the slip and packed behind the piling, had destroyed the elasticity of the wings.

The difficulties of the situation were increased by the swiftness of the tide, which runs with great rapidity along the end of the wharves on the Pennsylvania shore. As a result, the entrance into the slips, filled with ice to their bottom, could only be accomplished through the exercise of unusual force, and the shock which caused the unfortunate injury to the plaintiff was one of the perils of navigation which every traveler is liable to encounter.

The reduction of this peril to a minimum, so far as the operations of the defendant are concerned, is established by the fact that of the many millions of passengers carried by the defendant during the last twenty-five years, the plaintiff is the only one to suffer any injury. In making the trip in question the regular pilot was reinforced by the captain of one of the other boats which was unable to get across, and the handling of the boat as she was brought into the slip exhibited an unusual degree of skill, caution, and seamanship. It was not only that there was no negligence—there was diligence of the highest order, and everything was done to the best possible advantage.

BRIEF OF ARGUMENT.

The brief of argument of the plaintiff in error is principally devoted to questions not raised upon the bill of exceptions. With these the defendant in error has no concern. This

brief will be confined to the discussion of the narrow questions raised upon the record, alluding to the facts only for the purpose of enabling the court to understand the rulings of the court below, which are made the basis of this writ of error.

While if it were necessary there would be no hesitation in presenting this case in its entirety, so that the court might be satisfied of the correctness of the finding of the jury, it is well settled that this court will not undertake such a review.

In Mills *vs.* Smith, 8 Wallace, 27, Mr. Justice Grier says: "The counsel in their arguments in this case seem to have forgotten that this court have no right to order a new trial because they may believe that the jury may have erred in their verdict in the facts. If the court below have given proper instructions on the questions of law, and submitted the facts to the jury, there is no further remedy in this court for any supposed mistake of the jury.

The specifications of error are three. They will be considered in their order. The first relates to the refusal of the court to affirm the defendant's third point. Had the court affirmed this point the defendant would have had just cause to complain. The court was asked to say to the jury as a matter of law that the failure of the defendant to supply the plaintiff with a seat was negligence *per se*. A complete answer to this extraordinary proposition is found in the opinion of Mr. Justice Green in the case of the Camden Ferry Co. *vs.* Monaghan, 10 Weekly Notes of Cases, 46. In this case the plaintiff, a passenger on the defendant's ferry boat, while standing on the deck was thrown down in consequence of the boat being run into the slip with unnecessary and extraordinary violence. The case was tried before a referee without a jury. The referee found as a fact that the defendants had negligently run the boat into the slip with unnecessary violence.

The defendants sought to avoid the effect of their own established negligence by charging that the plaintiff was guilty of contributory negligence in standing upon the floor of the cabin when she might have occupied a seat. The Supreme Court of Pennsylvania, in disposing of this contention of con-

tributory negligence, said: "But the position she was in at the moment of the accident was not one of apparent danger at all. She was inside the cabin, near the door, in a place and in an attitude apparently of perfect safety. It is the uniform habit of persons riding on steamboats to be upon their feet at will while the boat is in motion, and especially as it approaches the landing. It is one of the most comfortable and satisfactory features of steamboat travel that passengers are at liberty to move about from place to place on the vessel while it is in motion."

If it is not negligence in a passenger to stand or walk upon the deck while the ferry boat is crossing the river, how can it be negligence in the ferry company to receive a passenger, because in consequence of the extraordinary concentration of the entire travel between Camden and Philadelphia upon this one boat there was no seat vacant for her?

There is no evidence that the boat Arctic was not adequately equipped and a well-constructed boat. On the contrary, the evidence is that, being a new and staunch boat, with engines of extraordinary power, she was able to break through the ice that closed all the other ferries, and that the line of the company on that day carried five times as many passengers as its usual daily average. (Printed Record, page 45.)

Had the passengers who crowded into the Arctic on that day been informed by the officers of the boat that in consequence of the occupancy of the seats no others could come on the deck, the action would have been regarded as most unreasonable. It cannot be that it was the duty of the defendant's agents to anticipate the accident which befel the plaintiff. During the last twenty years many millions of passengers have crossed by this ferry, and no accident or injury had been suffered. (Record, page 116.)

While the plaintiff's specification of error is that the court refused to instruct the jury that the defendants were *per se* guilty of negligence in receiving the plaintiff on their ferry boat when the seats were all occupied, the larger portion of the brief presented is devoted to sustaining the proposition that the jury is the proper tribunal to determine questions of negligence. The authorities cited by the plaintiff so completely sustain the

action of the court in declining to treat the question as one of abstract law that no further discussion of this point is necessary.

The second assignment of error is the refusal of the court to affirm the plaintiff's fourth point.

This point is in terms similar to the third point, with the exception of the insertion of the statement that the plaintiff was "a woman sixty-seven years of age." It will not be seriously contended that this fact makes any material difference in the duty of the defendant.

The plaintiff, from her own statement, was a vigorous woman, active on her feet (Record, page 12), capable of traveling by herself (Record, page 9). There were no circumstances in her case which imposed upon the defendants a different standard of duty towards her from that which they owed towards the other passengers.

It must be noticed that the *gravamen* of the negligence suggested in both points is the reception of the plaintiff as a passenger when the seats were all occupied.

The point was not a request for an instruction upon the duty of adequately supplying the boat with seats. It was not a request for instruction upon the duty of the defendant to bring the boat into the slip with the least possible shock. The only allusion in the point to the shock is that a sudden shock was the cause of the defendant being thrown down. There is no explanation of the cause of the sudden shock, whether through defendant's fault, the fault of another, or inevitable accident. It is simply introduced as a circumstance, the negligence charged in both points being the reception of the plaintiff as a passenger in the ferry boat when all the seats were occupied.

It may also be doubted whether the refusal to affirm specific points is the ground for reversal. All that the parties are entitled to is a fair presentation to the jury of the law governing the case. In Smith *vs.* Mills, 8 Wallace, 27, Mr. Justice Grier said: "After having thus correctly submitted the case to the consideration of the jury the court were not bound to answer a catechism of questions which would only confuse their minds and lead to erroneous conclusions."

The third specification of error contains two extracts from the charge of the court. The bill of exceptions does not show with what part of the charge the plaintiff was dissatisfied, but sets out the entire charge in disregard of rule 4, which provides:—

"The judges of the Circuit and District Courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of said charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and these matters of law and these only shall be inserted in the bill of exceptions and allowed by the court."

The failure to regard this rule has been the subject of comment by the Supreme Court. In United States *vs.* Rindskopf, 105 U. S., 419, Mr. Justice Field, in delivering the opinion of the court, said:—

"The bill of exceptions in this case sets forth the charge of the court below in full in disregard of our frequent condemnation of this practice. Only the parts to which the exceptions relate should have been given; all else is unnecessary, and produces only inconvenience.

"We repeat of this practice what we said of another practice not uncommon and equally objectionable—that of inserting the entire evidence in the record. If counsel will not heed our admonitions upon this subject, so frequently expressed by us, the judges of the court below, to whom the bills are presented, should withhold their signatures until the bills are prepared in proper form, freed from all matter not essential to explain and point the exceptions."

The same rule was applied with great strictness in the recent case of the Connecticut Insurance Company *vs.* Union Trust Company, 112 U. S., 250. In that case the exception was to the modification by the court in its general charge of a particular proposition submitted by one of the parties without stating specifically the modification to which objection was made. The exception was held to be too vague and indefinite.

In Beckwith *vs.* Bean, 93 U. S., 284, Mr. Justice Harlan, in delivering the opinion of the court, said :—

"The exceptions to the charge as given are too vague and indefinite to raise the questions which were claimed in argument to arise under the acts of 1863 and 1867. The exception is scarcely more definite than a general exception to the whole charge would have been. We cannot tell what specific portion of the elaborate charge construing the acts of Congress, or what specific portions of the charge concerning the evidence relied upon for justification under these acts, were intended to be covered by this general exception."

So in Cooper *vs.* Schlesinger, 111 U. S., 148, Mr. Justice Blatchford said : "The only exceptions presented are to the charge of the court to the jury. The entire charge is set out. There is a general exception by the defendants to the charge, but that is of no avail."

To the same effect are Beaver *vs.* Taylor, 93 U. S., 46; McNutt *vs.* Turner, 16 Wall., 362; and Lincoln *vs.* Laflin, 7 Wall., 132.

The reason of the rule is plain. The attention of the court below must be called to the alleged error so that there may be an opportunity to correct it before the jury withdraws for deliberation. This opportunity does not arise when the exception goes to the entire charge.

If the court should be of the opinion that the matters set out in the third specification are properly before it for review, still it is submitted that there was no error in the charge of the court below.

It is well settled that where the error assigned is in the charge, the detached sentences which are the subject of complaint must be read in connection with the context.

Cooper *vs.* Schlesinger, 111 U. S., 148.

The clause of the charge excepted to is as follows: "Now, gentlemen, I state to you that there was no fault in taking the plaintiff on board this boat at the time she was taken."

"I feel no hesitation in saying to you and I believe it to be my duty to say that the great weight of the evidence is against the plaintiff here, that the weight of evidence fully justifies the

conclusion that the officers in charge of this boat exercised all the skill and all the care required of them by law and their duty."

These extracts from the charge must be read in connection with that which immediately follows: "I say this to you while I do not take the question from you; you will say whether or not, looking at the question in the light of all the evidence, whether it is safe to find that the officers and men in charge of this boat exercised all the skill and all the care required of them by law and their duty."

From this additional extract it will be seen that the question of fact was fairly submitted to the jury upon the evidence, although the court exercised their recognized right of expressing an opinion on the evidence.

Mr. Binney's argument in Magniac *vs.* Thompson, 7 Peters, 385, on this point, was adopted by the court. He says: "What the plaintiffs' paper-book calls the overpowering argument of the court upon the facts is not a ground of exception. Whether the opinion of the court was right or wrong, it did not bind the jury. It may be difficult in some cases, and it was impossible in this, to say anything about the facts, without an overpowering argument against the plaintiffs' claim." Mr. Justice Story said: "The whole charge of the court is spread upon the record (a practice which this court has uniformly discountenanced, and which we trust a rule made at the last term of court will effectually suppress), and the question now is whether that charge contains any erroneous statement of the law; for as to the comments of the court upon the evidence it is almost unnecessary to say, after what was said by this court in Carver *vs.* Jackson, 4 Peters' Rep., 80, that we have nothing to do with them."

In Carver *vs.* Jackson, the same learned judge had said: "We take this occasion to express our decided disapprobation of the practice (which seems of late to have gained ground) of bringing the charge of the court below at length before this court for review. It is an unauthorized practice and extremely inconvenient both to the inferior and appellate court. With the charge of the court to the jury upon mere matters of fact,

and with its commentaries on the weight of the evidence, this court has nothing to do. Observations of that nature are understood to be addressed to the jury merely for their consideration as the ultimate judges of matters of fact, and are entitled to no more weight or importance than the jury in the exercise of their own judgment choose to give them. They neither are, nor are they understood to be, binding upon them as the true and conclusive exposition of the evidence. If, indeed, in the summing up, the court should mistake in the law, that would justly furnish a ground for an exception. But the exception should be strictly confined to that misstatement and by being made known at the moment would often enable the court to correct an erroneous expression, or to explain or qualify it in such a manner as to make it wholly unexceptionable or perfectly distinct."

The case was fairly submitted to the jury with such comments upon it as the circumstances of the case justified. The jury it is true came to a different conclusion from that usually reached by juries in considering the liability of a corporation defendant for alleged negligence, but it is not a ground of reversal that the verdict was on the same side as the weight of the evidence.

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